PART IV.

RULES UNDER THE INDIAN FORESTS ACT, VII OF 1878.*

(A).—Rules of local application.

Under section 31 (i).

The following rules made by the Governor in Council under section 31 (*i*) of the Indian Forest Act, 1878, for regulating the pasturing of cattle in the Protected Forests in the districts of Kánara, Belgaum and Dhárwár, are published with the previous sanction of the Governor General in Council :— (Notn. No. 2419, *B. G. G.*, 1883, Pt. I., p. 258.)

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*As regards rules under section 27 of the Act, a committee appointed to consider a draft set of rules relating to village and protected forests reported the following opinion :—

"2. The subjects submitted for our report were—1st, village forests, the remarks of the Government of India upon them, and the rules needed for them under section 27 of the Forest Act.

"There are no village forests as constituted by the Forest Act in this Presidency, and it appears to us to be very doubtful whether Government will for some time at least find it expedient to make any forests of this class. In the present condition of forests in Bombay it will, we think, be hardly possible for Government to assign its rights in forest lands to any village community without so much reservation that, as pointed out by the Government of India in paragraph 7 of their letter, it would be more expedient to begin by reserving and to make concessions than to begin by concession and make reservations. In the Southern Division, Government might be able to admit the people in some places to participate in forest privileges, but we question whether the village communities in such situations are sufficiently organized to be dealt with as a responsible body. We think, therefore, that for the present there is no need for any rules providing for village forests under section 27.

"3. 2nd, Protected forests.—This class of reserve appears to have been constituted by the legislature to meet the case of lands which it is not desirable to subject to rigid conservation in view of public right or convenience, and the tenor of the remarks in the letter of the Government of India leads generally to a conclusion that the recognition of such claims should be as little hampered by rules and procedure as is consistent with conservation.

"4. The Act, moreover, does not require that rules should be made all at once; it contemplates that they should be 'made from time to time.'

"5. The rules submitted to the Government of India were framed, we understand, to meet the requirements of certain forest areas in the Southern Division, and they are believed to embody the departmental procedure in force in those areas; but it is hardly possible that they should be equally applicable in the districts of the Northern Division in which the formation of protected forests is in contemplation.

"6. The conclusion which we have come to regarding the rules for protected forests is to recommend to Government that the reports of the Settlement Officer, the Conservator and the Collector concerned in the formation of protected forests should be awaited, and such rules as may be found requisite in each case should be adopted. It may be that some general rules applicable to all cases may be framed, but, as at present informed, we are of opinion that it would be premature to adopt any of those in the draft as of general application." (G. R. 6698 of 18th December 1880.)

(1) In every protected forest a fee shall be charged at such rates as shall from time to time be sanctioned by Government for the pasturing of cattle within such limits as shall from time to time be assigned by, or under the orders of, the Conservator of Forests for this purpose.

Fees for pasturing cattle

(2) No person shall pasture cattle in any portion of any such protected forest so assigned without previously paying the prescribed fee.

to be prepaid.

(3) Nothing in these rules shall be deemed to abridge or affect:

Limited effect of rules.

(a) any recorded right of any private person in any protected forest, or

(b) any existing grazing right of any private person in any protected forest declared under section 34 of the Act and in which rights of private persons have not been enquired into, settled and recorded.

(Notn. No. 185, *B. G. G.*, 1886, pp. 29 and 30.)

II.—Regulating the management of the Protected Forests in the marginally noted Villages of the Akola Táluka of the District of Ahmednagar.*

* Ghátghar.	Kumshet.
Uddavné.	Ambit.
Pánjré.	Pachmai.
Shinganvádi..	Lohári Kotul.

1. Lands of either of the two following descriptions may be cleared or broken up for cultivation in the said forest subject to the conditions, if any, respectively applicable thereto, *viz.*:

(a) land the right to cultivate which has been recorded in an enquiry under section 28 of the Forest Act, or

(b) land let for cultivation under a lease which is at the time in force and has been granted under these rules.

2. The unoccupied land in the said forest suitable for cultivation having been divided off by the Survey Department, under the orders of Government, into fields which bear distinctive numbers and having been measured and assessed by the said Department at a moderate rent, any of the said fields (hereinafter called "numbers") may be let at the rent so assessed to any person who is, and has been for not less than five years previously, a resident of the village in which the number is situate, subject to the conditions contained in these rules.

3. The lease of a number may be sold by public auction or granted, at the discretion of the Divisional Forest Officer, with or without payment of a premium.

4. Every lease granted under these rules shall be in the form A hereto annexed and shall be executed by the Divisional Forest Officer, if he is competent under the rules in force in this behalf to execute such an instrument, or otherwise by the Conservator.

No such lease shall be granted until the intending lessee has executed a counterpart agreement in the

form B hereto annexed, bearing an endorsement of the tenor prescribed in the said form signed by the village officers.

5. In the first year in which these rules are in force leases shall be granted for a term of thirty years. Leases granted after the said first year shall be for terms which will expire simultaneously with the terms of the first year's leases.

6. The rent due annually in respect of lands leased under these rules shall be payable in two equal instalments on the 10th December and 10th January respectively.

7. On the expiry of the term of any lease granted under these rules the lessee shall be entitled to a renewed lease for such term and subject to such conditions and the payment of such rent as Government shall think fit to prescribe.

8. Every lease granted or renewed under these rules may at any time be cancelled by the Divisional Forest Officer or the Conservator of Forests:

(*a*) If the lessee or any co-sharer of the land held by the lessee is convicted of any offence under section 32 of the Forest Act and such conviction is not subsequently reversed or quashed; or

(*b*) if the land included in the lease or any portion of it is subjected, without the previous sanction of the Divisional Forest Officer or of the Conservator of Forests, to any mortgage, charge, sub-lease or alienation; or

(*c*) if the land included in the lease or any portion of it is subjected to *dalhi* cultivation; or

(*d*) if any instalment of rent due in respect of the land is not paid or recovered under section 81 of the Forest Act, before the close of the revenue year in which it is payable;

(*e*) if the lessee ceases to be a resident of the village in which the land is situate.

When a lease is cancelled under this rule, it shall be deemed for the purposes of Rule 1 to cease to be in force from such date as shall be fixed in this behalf by the officer cancelling the same.

9. An appeal shall lie from any order made by the Divisional Forest Officer under the last preceding rule to the Conservator of Forests. The order of the Conservator of Forests shall be final.

10. No lease granted under these rules shall be deemed to confer upon the lessee any right in or over the trees or other forest produce of the land included in such lease; but, subject to a reservation of the right of Government at any time to reconsider and amend or cancel such concession and to the provision of Rule 11, the Governor in Council directs that the lessee of any land of which a lease is granted or renewed under these rules shall be permitted upon or from the said land:

(*a*) to lop trees, not being trees which are reserved under section 29 of the Forest Act, for the purpose of obtaining *ráb* for manure;

(*b*) with the written authority of the Divisional Forest Officer to cut and remove trees, not being trees reserved as aforesaid and not exceeding 15 inches in circumference at the base, which in the opinion of the said officer impede cultivation;

(*c*) to pasture and to cut and remove grass for his own cattle, sheep and goats;

(*d*) to gather and remove edible fruits and roots;

(*e*) to gather and remove dead wood for fuel;

(*f*) to quarry or gather and remove stones for his own use for any agricultural or domestic purpose.

11. Lessees exercising the privilege of lopping trees for obtaining *ráb* conceded by clause (*a*) of the last preceding rule shall leave uncut a main leading shoot (*shenda*) of each tree which they so lop.

12. Any person permanently residing in any of the said villages may, in any unoccupied number of the protected forest in the village in which he resides, pasture, or cut and remove grass for his own cattle, sheep and goats without license or payment of any fee.

The Governor in Council reserves the right at any time to reconsider and amend or cancel this concession.

13. Except as provided in Rule 10 and in the last preceding rule, no cattle, sheep or goats may be pastured and no grass may be cut in the said protected forest without written authority from the Divisional Forest Officer.

FORM A.

(See Rule 4.)

*FORM OF LEASE.

To *A. B.*_____ resident of_____

I, C. D. (here enter *the executant's official designation*), by order of the Governor of Bombay in Council, hereby grant, on behalf of the Secretary of State for India in Council, to you *A. B.* a lease for years commencing from the day of 189 of the field No. in the protected forest of the village of in the Akola Táluka of the Ahmednagar District on payment of an annual rent therefor of Rs.

This lease is granted subject to the provisions of the Indian Forest Act, 1878, and of the rules from time to time in force in the said protected forest framed under section 31 of the said Act.

Dated the day of 18 .

(Signed)
C. D.

FORM B.

(See Rule 4.)

FORM OF COUNTERPART AGREEMENT.

To the *Secretary of State for India in Council.*

I, *B. A.*, inhabitant of in the Akola Táluka of the Ahmednagar District, hereby accept the lease of the field No. in the protected forest of the above village for the term of years commencing on the day of 189 subject to the provisions of the Indian Forest Act, 1878, and of the rules from time to time in force in the said protected forest framed under section 31 of the said Act, and I undertake to pay annually Rs. on account of the rent of the said No. in the instalments and on the dates prescribed in this behalf in the rules aforesaid.

Dated the day of 189 .

Written by

(Signed)
A. B.

Signed by *A. B.* in the presence of

_____

_____

Endorsement.

We, the undersigned, declare that to the best of our knowledge and from the best information we have been able after careful inquiry to obtain, the person who has executed this agreement is *A. B.*, resident of the abovenamed village of , and that he has been residing in the said village for a period exceeding five years and is a fit person to be accepted as responsible for the punctual payment of the rent of the number which has been leased to him.

(Signed)
E. F. Patel. | of the above
G. H. Accountant. | village of

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* The Government of India has, under section 8 of the Stamp Act, 1879, remitted prospectively and reprospectively the duty chargeable on leases granted under these rules: Notification No. 207, *B. G. G.*, 1886, p. 3.

(Notn. No. 186, *B. G. G.*, 1886, Pt. I., p. 3.)

In exercise of the power conferred by section 29 of the Indian Forest Act, 1878, the Governor in Council is pleased to prohibit in the protected forests in the villages marginally noted in the Akola Táluka of the Ahmednagar District, from the first day of February 1886—

Ghátghar.
Uddavné.
Pánjré.
Shinganvádi.
Kumshet.
Ambit.
Pachnai.
Lohári Kotul.

(*a*) the breaking up or clearing for cultivation, for building, for herding cattle, or for any other purpose, of any land in such forest except in accordance with the rules prescribed in that behalf under section 31 of the said Act in Government Notification No. 185, dated 12th instant;

(*b*) the quarrying of stone, the burning of lime or charcoal, and the collection of, or the subjection to, any manufacturing process, or the removal of any forest produce, except in accordance with the rules aforesaid and with the proviso to this notification:

Provided that, until further orders, any person permanently residing in any of the said villages may, in any unoccupied number in the protected forest of the village in which he resides:

(*c*) gather and remove edible fruits and roots,

(*d*) gather and remove dead wood for fuel,

(*e*) quarry or gather and remove stones for his own use for any agricultural or domestic purpose.

And in further exercise of the powers conferred by the said section the Governor in Council is pleased to declare all mango, hirda and jámbul trees and bámbus in the protected forest in the said villages to be reserved from the said date.

III.—Rules under Section 31 and prohibitions under Section 29 exactly similar to the above have been made with reference to the Protected Forests in the Village of Sámrad in the Akola Táluka, Ahmednagar District,—vide Notifications Nos. 1915 and 1915A., B. G. G., 1887, pp. 270 to 272.

IV.—Rules regulating the matters mentioned in Section 31 within the limits of the Protected Forests in the Dohad and Jhálod Mahálś of the Panch Mahálś District.

I.—No person shall—

(Notn. No. 185, *B. G. G.*, 1890, p. 75.)

Cutting trees and grazing cattle without license prohibited.

(*a*) fell, lop or cut any trees, or sever from any tree any portion thereof; or

(*b*) graze any cattle within the limits of the Protected Forests in the Dohad and Jhálod Mahálś without or otherwise than in accordance with the terms of a license or permit in writing granted under these rules.

II.—No license or permit shall authorize any person—

No license to authorize cutting of reserved trees or grazing of camels or goats, &c.

(*a*) to cut or remove any tree of any class declared by Notification under section 29 of the Indian Forest Act to be reserved within the limits of the said Protected Forests;

(*b*) to graze or bring within the said limits any camel, goat, pig, or elephant.

Licenses to cut unreserved trees how obtainable and on what conditions.

III.—Every cultivator in a village containing Protected Forest may, on application to the Mámlatdár or Mahálkari of the mahál in which it is desired to exercise the privilege, obtain without payment a license to cut unreserved trees subject to the following provisions:

(*a*) The Mámlatdár or Mahálkari must be satisfied—

(1) that the applicant is a cultivator entitled by his residence in a village containing Protected Forest to claim such license;

(2) that the timber to be felled is to be used solely for agricultural or domestic purposes and not for sale;

(3) that such timber is not obtainable on the applicant's own land, or on any waste land other than forest land within reasonable distance.

(*b*) The Mámlatdár or Mahálkari may refuse a license if he considers that the applicant has on any occasion—

(1) broken the conditions of any license previously granted to him;

(2) been guilty of any forest offence or of any wilful act or gross negligence likely to cause injury or loss to Government in respect of any forest produce.

Particulars stated in license to be binding on the holder.

IV.—Every license to trees shall specify the following particulars:

(*a*) the name, father's name and residence of the licensee;

(*b*) the kind and approximate quantity of the timber thereby authorized to be cut; and

(*c*) the period for which it is to remain in force.

The statement of such particulars in a license shall be binding on the holder.

Permits to graze cattle to be granted free to resident cultivators in forest villages and to others on payment of fees.

V.—Permits to graze cattle kept for agricultural purposes shall be in writing and shall be granted either:

(*a*) to cultivators resident in the villages containing the said Protected Forests, and may be

obtained from the Patels or Talátis of the village without payment of fees; or

(*b*) to professional graziers and other persons not being cultivators resident in the villages containing the said Protected Forests, and may be obtained from the Mámlatdár or Mahálkari of the mahál in the Protected Forests of which the cattle are to be grazed on payment of fees at the rates specified below:

	Non-cultivators.			Professional graziers.		
	Rs.	a.	p.	Rs.	a.	p.
Buffalo	0	3	0	0	6	0
Cow or bullock	0	2	0	0	4	0
Horse or donkey or sheep ...	0	1	0	0	2	0

N.B.—Calves, &c., to be grazed free as long as they keep with the dam.

Particulars in permit to be binding on the holder.

VI.—Every permit to graze cattle shall specify—

(*a*) the name, father's name, and residence of the person to whom it is granted;

(*b*) the number and description of the cattle thereby authorized to graze;

(*c*) the fee, if any, paid in respect thereof;

(*d*) the period for which such permit is to remain in force.

The statement of such particulars in a permit shall be binding on the holder thereof.

Licenses and permits not transferable.

VII.—No license or permit granted under these rules shall be transferable, or authorize any act by any person except the holder, the members of his household, and his paid servants.

To be produced on demand,

VIII.—Every person acting under colour of a license or permit granted under these rules shall produce the same on demand thereof by any public servant.

and return on expiry.

IX.—Every holder of a license or permit shall, on the expiry of the period for which it was granted, return the same to the officer by whom it was granted.

Privileges of residents in forest villages without license or fee.

X.—All cultivators in villages containing the said Protected Forests shall be allowed without license, written permit, or payment of fee—

(*a*) to cut and remove grass, and to cut and remove branches of the saleda tree required for marriage ceremonies;

(*b*) to collect and remove mowra, mangoes, dead leaves of all sorts, gum, lac, honey, and other forest produce except timber;

(*c*) to remove head-loads of dead wood of all sorts including teak;

(*d*) to remove stone, kankar, and earth for their own use for domestic or agricultural purposes, but not for sale.

But such privileges shall be subject to the following condition:

(1) that the persons allowed to exercise them shall not set fire to any grass or other forest produce within the limits of the said Protected Forests, or stack any grass or other forest produce within the said limits.

XI.—The Mámlatdár or Mahálkari may grant written permission to any cultivator residing in a village containing Protected Forests to cut and remove free of charge thorns for fencing, specifying after consultation with the forest authorities, the portion of forest in which the cutting shall be made. In case of difference of opinion betwen the Mámlatdár or Mahálkari and those authorities, reference shall be made to the Collector, whose order shall be final.

Claim to license or privileges forfeited by abuse thereof.

XII.—Any person contravening or exceeding the conditions on which any privilege, license, or permit is or may be granted under these rules, or being guilty of any forest offence or of any wilful act or gross negligence likely to cause any loss or injury to Government in respect of any forest produce within the said Protected Forests, shall thereby forfeit all claim thereafter to any privilege, license or permit under these rules.

(Notn No. 885A., *B G. G.*, 1890, Pt. I., p. 76.)

In exercise of the powers conferred by Section 29 of the Indian Forest Act, 1878, His Excellency the Governor in Council is pleased to declare all trees of the classes marginally noted in the Protected Forests in the Dohad and Jhálod Mahals of the Panch Mahals District to be reserved from the 15th day of February 1890.

1 Teak.	10 Dhávda.
2 Blackwood.	11 Sadar.
3 Bhia.	12 Mowra.
4 Timra.	13 Mango.
5 Rohan.	14 Tamarind.
6 Ryan.	15 Nim.
7 Mokho.	16 Beherda.
8 Kher.	17 Chároli.
9 Bábul.	18 Bamboo.

2. In further exercise of the said powers His Excellency the Governor in Council is pleased from the said date to prohibit, within the said forests, except so far as may be permitted by any rule made under section 31 of the said Act:—

(*a*) the breaking up or clearing for cultivation, for building, for herding cattle, or for any other purpose any land therein;

(*b*) the quarrying of stone, the burning of lime or charcoal and the collection or subjection to any manufacturing process or removal of any forest produce.

(B) RULES OF GENERAL APPLICATION.

Under Section 41.

The following rules for regulating the transit of timber and other produce made under the provisions of section 41 of the Act by His Excellency the Governor in Council are published with the previous sanction of the Governor General in Council :—

[*These rules are not in force in the Ahmedabad, Kaira and Broach Districts.—Notification No 2430, Bombay Government Gazette, 1883, Pt. I., p. 258.*]

(Notn. No. 33 *B. G. G.*, 1880, Pt. I., p. 689.)

1. All words used in these rules and defined in Act VII of 1878 (The Indian Forest Act) shall be deemed to have the meaning respectively attributed to them by the said Act.

2. No timber* or other forest produce shall be moved into or from any of the districts in the Presidency of Bombay mentioned in Appendix A, except by the routes therein respectively specified, or by such routes as may be entered in the pass by the Conservator of Forests or by any officer of Government authorised by him in that behalf.

3.† No timber or other forest produce shall be moved within any district of the Bombay Presidency, except within the limits of a Reserved Forest (whether a Village Forest or not) or of a Protected Forest,

and, except as is hereinafter otherwise provided, no timber or other forest produce shall be moved from or into any such district,

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*"Timber," as used in section 41 of the Indian Forest Act in the rules made under that section, signifies timber which is forest produce. (G. R. No. 8055 of 11th October 1884, R. D.) But now *vide* new Act V of 1890, section 2 (2) and section 6; and as to the construction of section 44 before the amendment of the Act, *vide* Proceedings of the Legislative Council, Gazette of Government of India, 4th September 1889, pp. 150-151, and 24th February 1890, pp. 26 and 27.

†The following rule has been made under section 157, clause (*c*) of the Sea Customs Act :—

No timber, firewood, bamboos, myrabolams and shikákái shipped at any place declared under section 12 of the Sea Customs Act, 1878, to be a port, or at any Customs port, except the port of Bombay and the ports in Sind and in the districts of Ahmedabad, Kaira and Broach, may be carried in a coasting vessel;

(*a*) unless at the time of shipment the shipper appends to his Shipping Bill a pass in one or other of the forms hereinafter mentioned covering such timber, firewood, bamboos, myrabolams and shikákái; nor

(*b*) until the Customs Collector at the port of shipment shall have certified by endorsement on the Shipping Bill that a pass as aforesaid has been produced before him and cancelled by him.

The pass required by this rule shall be either a pass granted by a competent officer under No. 3 of the rules framed by Government under section 41 of the Indian Forest Act, 1878, and published at page 689 of the *Bombay Government Gazette* for 1880, Part I, or a pass granted for the purpose of this rule by an officer belonging to any of the classes mentioned below :—

Mámlatdárs.
Head Kárkúns.
General Duty Kárkúns.
Talátis.
Kulkarnis.
Mahálkaris.

(Notn. No. 5421, *B. G. G.*, 1884, p. 500, and Notn. No. 941, *B. G. G.*, 1885, p. 144.)

without a pass from a Conservator of Forests, or from some officer empowered by a Conservator of Forests, or from some person duly authorized under Rule 13 to issue such pass, or otherwise than in accordance with the conditions of such pass:

Provided that nothing in this rule shall be deemed

(*a*) to apply to timber or forest produce which is the property of Government, or

(*b*) to apply to timber or other forest produce, the property of one person, or the joint property of two or more persons, which is conveyed in quantities not exceeding one head-load once in twenty-four hours, or

*(*c*) to require a pass for the removal of any timber or other forest produce within the limits of the village in which it was produced.

Every pass issued under the last rule shall specify:

(1) the name of the person to whom such pass is granted;

(2) the quantity and description of timber or other forest produce covered by it;

(3) the places from and to which such timber or other forest produce is to be conveyed, and the route by which it is to be conveyed;

(4) the period for which such pass is to be in force;

(5) the officer to whom it is to be returned on the expiry of such period, or on the arrival of the timber or other forest produce at its destination, whichever event happens the first.

5. In the case of timber or other forest produce which it is wished to import otherwise than by sea from any place beyond the frontier of British India, no pass shall be issued under Rule 3 unless upon production of a "Foreign Pass" covering such timber or other forest produce, nor, if such timber be of large scantling, unless it bears a Foreign Property-mark.

6. Every such Foreign Pass must be in a form, and every such Foreign Property-mark must be of a description, which has been registered in the office of the Conservator of Forests of the Division into which it is sought to import such timber, or forest produce, and such Foreign Pass must bear the signature of some officer or other person whose name or official designation has been duly registered in the said office as an officer or person duly authorized to sign such passes.

7. Any timber or other forest produce, which it is wished to import otherwise than by sea from any

* Memo. by L. R:—Land which is declared to be a reserved or protected forest does not cease to form part of the village in which it was originally situated merely because it becomes a forest. I think, therefore, that proviso (*c*) to No. 3 of the rules under section 41 of the Forest Act dispenses with the necessity of a pass for timber taken from a reserved or protected forest to any other part of the same village in which such forest is situated. (G. R. No. 3806 of 26th May 1886, R. D.)

place beyond the frontier of British India, may be conveyed within such frontier by any of the routes named in Appendix A., or by such routes as may be prescribed by the Conservator of Forests or by any officer of Government authorized by him in that behalf as far as the first depôt on such route established under Rule 15, without a pass under Rule 3, if it is covered by a Foreign Pass in proper from and duly signed and if, in the case of timber of large scantling, it is marked with a registered Foreign Property-mark, but not otherwise.

No such timber or forest produce shall be stacked, or deposited in any place between the frontier and such depôt, or be moved beyond such depôt without a pass issued under the said rule.

8. If the Conservator of Forests of the Division shall so direct, no timber of large scantling, which has been imported as aforesaid by any particular route, shall be moved beyond such first depôt without first having a Government transit mark of such description as the said Conservator shall prescribe stamped upon it.

9. In respect of every pass issued under Rule 3 there shall be payable such fee, if any, as the Conservator of Forests shall, from time to time, prescribe with the previous sanction of Government, for each district; and no such pass shall be issued until the fee so prescribed has been paid.

10. No person who belongs to a community to which a Village Forest is assigned and no inhabitant of a town or village in the vicinity of a Protected Forest, who is permitted to take timber or other forest produce from such forest for his own use, shall be entitled to receive a pass under Rule 3 for the removal of timber or forest produce from such forest to any place beyond the limits of the town or village in which such person resides:

Provided that in the district of Kánara a pass may be issued for moving from the said district any timber which has been given, on payment of the fees to be hereafter prescribed, for a specific purpose, and has been used by the grantee for that purpose,

but only on payment of an additional fee of fifty per cent. on the amount of the fee originally paid, if such timber is being moved by any person other than the original grantee,

unless the Collector, or the Conservator of Forests, or any of their Assistants or Deputies to whom an application may be made in this behalf, shall be satisfied that such timber is being moved for charitable purpose and shall be of opinion that such additional fee should be reduced or remitted,

in which case a pass may be granted either without additional fee or on payment of a reduced fee, as the Collector or other officer aforesaid shall determine.

11. In every other case the owner of timber or other forest produce shall be entitled to receive a pass for the same under Rule 3 for any of the purposes for which such passes may be granted.

COMPILATION OF GENERAL RULES IN FORCE IN THE REVENUE DEPARTMENT.

Corrigendum.

(1) In rule 13 of the rules framed under section 41 of the Indian Forest Act, 1878, published at page 129 of the Compilation of General Rules in force in the Revenue Department—

(*a*) after the words "Conservator of Forests," where they occur for the first time, insert the words "or any Deputy or Extra Deputy Conservator of Forests specially empowered by him in this behalf;" and

(*b*) after the word "Conservator," where it occurs for the second, fourth and fifth times, insert the words "or Deputy or Extra Deputy Conservator."

12. In the district of Kánara passes under Rule 3 for the moving of timber or other forest produce beyond the inland frontier of the said district will be issued in duplicate, one white and one green, and the date of exit will be recorded upon each of such duplicate passes by the Forest Officer at the appointed watch-house on the frontier, and the green pass shall be surrendered by the holder thereof to such officer, who shall return it without delay to the office from which it was issued.

13. The Conservator of Forests may, if he thinks fit, at any time, by an order in writing:

(*a*) authorize any person who is an owner of timber or other forest produce, or the agent of any such owner, to issue passes under Rule 3 in respect of any timber or other forest produce which belongs to such person, or to the person for whom such person is agent, and

(*b*) cancel such authorization.

When the Conservator of Forests authorizes any person under clause (*a*) of this rule, he shall furnish such person from time to time with authenticated books of blank printed forms of passes with the particulars required by clauses (4) and (5) of Rule 4 already filled in, and no alteration shall be made by such person in any of the said particulars, or if made, shall have any validity.

The said person shall pay for each such book such sum as shall from time to time be determined by the Conservator of Forests, and in the event of an order being passed by the Conservator of Fosests under clause (*b*) of this rule, shall at once return to the said Conservator every unused book and every unused portion of any such book then remaining in his possession, and shall be entitled to receive back the amount paid by him in respect of such unused book or portion of a book.

No pass issued by any such person after the issue of an order under clause (*b*) of this rule, and no pass issued by him which is not on a form supplied to him as aforesaid, shall have any validity.

*14. Timber or other forest produce in transit may be stopped and examined at any place by any Forest or Police officer if such officer shall have reasonable ground for suspecting that any money which is payable to Government in respect thereof has not been paid, or that any forest offence has been or is being committed in respect thereof.

The person in charge of any such timber or other forest produce shall furnish to any such officer all the information which he is able regarding such timber or other forest produce; and if he is removing the same under a pass shall produce such pass, on

*All officers of the Customs, Salt and Ábkári Departments are appointed Forest Officers for the purposes of carrying out the provisions of Section 52 of the Indian Forest Act, 1878, and Rule 14 of the Rules made under Section 41 of the same Act, but this does not apply to the Ahmedabad, Kaira and Broach Districts. (Notification No. 7990-A, B. G. G. 1882. pt. I. p. 97, and Notification No. 2430, B. G. G. 1883. pt. I. p. 258.)

demand, for the inspection of such officer, and shall not in any way prevent or resist the stoppage or examination of the said timber or other forest produce by such officer:

Provided always that no such officer shall vexatiously or unnecessarily delay the transit of any timber or other forest produce which is lawfully in transit, nor vexatiously or unnecessarily unload any such timber or other forest produce, or cause the same to be unloaded, for the purpose of examination.

15. The Conservator of Forests may establish at such convenient places as he shall think fit on the routes by which timber or other forest produce may lawfully be conveyed, depôts to which such timber or other produce shall be taken for all or any of the following purposes (namely) :—

for examination previous to the grant of a pass in respect thereof under Rule 3 or under Rule 13, or

for determining the amount of money, if any, payable on account thereof to Government, and for the payment of such money, or

in order that any mark required by law or by these rules to be affixed thereto, may be so affixed.

16. A Forest Officer appointed by or under the orders of the Conservator shall have charge of each such depôt, and no timber or other forest produce shall be brought into, stored at, or removed from a depôt without the permission of such officer, and for storing timber or other forest produce in such depôt, and allowing laden carts, or loads or cattle to stand or to be deposited therein, such fees shall be payable as the Conservator of Forests, with the previous sanction of Government, shall from time to time notify.

17. The Conservator of Forests shall from time to time make known by notification published in the *Bombay Government Gazette*, and locally in such manner as he deems fit, the name and situation of every depôt in his division.

18. The person in charge of any vessel which carries timber or other forest produce on a river on the banks of which one or more of such depôts are situated, shall call and stop his vessel at each such depôt which he has to pass, in order that the timber or other forest produce may be examined, if necessary, under the provisions of Rule 14; and the person in charge of such vessel shall not proceed with such vessel past any such depôt without the permission of the Forest Officer in charge of such depôt.

19. No person shall close up or obstruct the channel or any portion of the bank of any river lawfully used for the transit of timber or other forest produce, or throw grass, brushwood, branches, or leaves into any such river, or do any other act which may cause such river to be closed or obstructed.

COMPILATION OF GENERAL RULES IN FORCE IN THE REVENUE DEPARTMENT.

Corrigendum.

To the rule substituted for rule 21 of the rules framed under section 41 of the Indian Forest Act, 1878, published at page 131 of the Compilation of General Rules in force in the Revenue Department, add the following explanation:—

"*Explanation* :—This rule does not apply to the ordinary operations of domestic carpentry, or to other similar work on a small scale."

[To be inserted below No. 21 of the Rules made under Section 41 of the Indian Forest Act, VII of 1878 (as amended by the Forest Act, V of 1890), and published at page 131 of the Compilation of General Rules in force in the Revenue Department.]

"EXPLANATION—This rule does not apply to trees when standing or growing within such limits, but only to 'timber' as defined in the Act. When trees belonging to a private owner within such limits have either fallen or been felled, permission should not be deemed to be required under this rule—

[Notn. No. 2206, *Bombay Government Gazette*, 1899, Part I, page 406.]

(*a*) for lopping merely the boughs of such trees for the purpose of facilitating the removal of the uncut timber, or

(*b*) for cutting and burning the boughs of such trees for *rab* or *kumri* cultivation."

2 B.7.0-Dharwar

COMPILATION OF GENERAL RULES IN FORCE IN THE REVENUE DEPARTMENT.

Corrigendum.

In Rule No. 21 of the rules for regulating the transit of timber and other forest produce published in Government Notification in the Revenue Department, No. 4133, dated the 9th August 1880, as subsequently amended, and printed at pages 126b to 132 of the Compilation of General Rules in force in the Revenue Department, for the words "an Extra Assistant Conservator" the words "a Range Forest Officer" shall be substituted.

G. N., R. D., No. 8186, dated the 10th September 1910, *B. G. G.*, 1910, Pt. I, p. 1481.

20. Any Forest Officer not lower in rank than a Sub-Assistant Conservator of Forests may take such measures as he shall at any time deem to be emergently necessary for the prevention, or removal of any obstruction of the channel, or of any part of a bank of a river lawfully used for the transit of timber or other forest produce, but any such case which is not emergent shall be reported to the Collector, who may by written notice require the person whose act or negligence has caused or is likely to cause the obstruction, to remove or take steps for preventing the same within a period to be named in such notice, and if such person fails to comply with such notice may himself cause such measures to be taken as he shall deem necessary.

The reasonable costs incurred by a Forest Officer or by the Collector under this rule shall be payable to Government by the person whose act or negligence necessitated the same.

*21. No person shall establish a saw-pit or convert, cut, burn, conceal or mark timber within one mile of the limits of any Reserved Forest (whether a Village Forest or not) or of any Protected Forest, without the previous written permission of a Forest Officer not lower in rank than a Sub-Assistant Conservator.

22. No timber of large scantling which does not belong to Government shall be moved from any district of the Presidency of Bombay, unless there is affixed thereto a distinguishable Private Property-mark of the owner of such timber of a description which has been registered in the office of the Conservator of the Division, nor (if the said Conservator shall so direct) unless there has been made thereupon a Government transit mark of such description as shall from time to time be prescribed in this behalf by the said Conservator.

23. The Conservator of Forests shall, upon receipt of an application for registration of any form, mark, or name for the purposes of Rule 6 or Rule 22, inquire into the authenticity of the same, and if he sees no objection shall, on payment by the applicant of such fee as shall from time to time be prescribed by Government, register such form, mark or name in his office.

Every such registration shall be held good for a period of one year only.

24. No person other than a Forest Officer whose duty it is to use such mark, shall use any property.

*Timber under section 41 of the Forest Act and the rules passed under that section has been decided to be, timber when found in or brought from a Government or private forest. Rule 21 cannot therefore be applied to trees or brushwood growing on occupied land outside a forest. Government consider that Rule 21 cannot be used to prohibit absolutely the establishment of a bangle maker's furnace. It can only be applied to the burning therein of timber from a forest, so that if any one is proved to have burned such timber in a furnace within the prescribed limit without a permit, he is liable to the penalties prescribed in Rule 26. (G. R. No. 3758, 25th May 1886, R. D.) (N.B.—This Resolution was based upon the interpretation put upon Section 41 before Act V of 1890 became law.)

mark for timber which is identical with, or nearly resembles any Government transit mark, or any mark with which timber belonging to Government is marked;

and no person shall, while any timber is in transit under a pass issued under Rule 13, alter or efface any mark on the same.

25. Nothing in the foregoing Rules 2 to 24, both inclusive, shall be deemed to apply to the Province of Sind.*

In that Province the special rules contained in Appendix B shall be applicable.

26. Any person who breaks any of the foregoing Rules 2 to 24, both inclusive, or any of the rules contained in Appendix B, shall be punished with imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

27. Nothing in the foregoing Rules 2 to 26, of both inclusive, shall be deemed to apply to the city Bombay as defined in the Bombay General Clauses Act, 1866.†

20th October 1879.

(C). In exercise of the power conferred by section 51 of the Indian Forest Act, 1878, the Governor in Council is pleased to make the following rules concerning the collection of drift and stranded timber:—

(Notn. No 547 *A., B. G. G.*, 1879, p. 847.)

1. Any person may collect timber of any of the descriptions set forth in section 45 of the Act, and, pending the bringing of the same to the proper depôt for the reception of drift-timber, may keep the same in his own custody, but he shall report his having done so within 24 hours to the nearest Forest Officer.

2. Any person may register in the office of the Conservator of Forest one or more boats for use in salving and collecting timber, on payment of a fee of one rupee for each boat.

Such registration shall hold good for the period of one year only, but may be repeated from year to year.

3. Every person, whether a Forest Officer or not, who collects any such timber, shall be entitled to receive a recompense equal to 15 per cent. of the estimated value of the timber. Such estimate shall be made by any Forest Officer not lower in rank than an Assistant Conservator of Forests, whom the Conservator specially authorizes in this behalf, and the recompense shall be paid at once by Government: Provided that when the timber has been recovered by means of a boat registered for use in salving and collecting timber, the person who collected it shall be entitled to receive a recompense equal to 25

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* For special rules under sec. 41 for the Province of Sind—vide *infra*, p. 137.

† *Vide* now B. III of 1886, sec. 3 (7).

(To be pasted in the margin of Rule No. 1 of the Rules made under Section 51 of the Indian Forest Act, 1878, at page 132 of the Compilation of Rules in force in the Revenue Department.)

To Rule No. 1 add the following :—

ptn. 4875, *B.* ., 1896, I, page

"If it appears to the Forest officer in charge of the Range in which the timber has been found that the cost of collecting and conveying such timber to such depôt is likely to equal or exceed the probable proceeds of its sale at the depôt, the timber

(*a*) if unmarked may be sold by or under the orders of the Divisional Forest Officer on the spot where it is found or collected,

(*b*) if marked shall not be collected by a Forest officer."

(To be inserted below (C) containing Rules under Section 51 of the Indian Forest Act, 1878, at page 133 of the Compilation of Rules in force in the Revenue Department).

(C1).—In exercise of the powers conferred by Section 51 of the Indian Forest Act, No. VII of 1878, as amended by Act No. V of 1890, the Governor in Council is pleased to make the following rules to regulate in the Province of Sind the matters specified in the said section, and to supersede, but so far only as the said Province is concerned, all previous rules on the same subject heretofore in force :— (Notn. No. 1111, dated the 18th Feb. 1902, B. G. G., 1902, Pt. I, pages 297 and 298).

Rules.

Registrar of Boats entitled to collection.

1. The Registrar of Boats on the River Indus shall, for the purposes of Section 45 of the Indian Forest Act, 1878, be a Forest Officer entitled to collect all timber found adrift, beached, stranded, or sunk on, or on the banks or islands of, or in, the River Indus and its tidal channels.

Permission to collect.

2. With the sanction of the Commissioner in Sind the Registrar of Boats may grant permission to any person to collect such timber as aforesaid, subject to the provisions of the Indian Forest Act, 1878, and of all rules in force thereunder.

Right to sell or dispose of timber.

3. With the like sanction the Registrar of Boats may sell or otherwise dispose of any such timber as aforesaid, the ownership of which vests, or, under Section 48 of the Indian Forest Act, 1878, shall have vested, in Government.

Penalty.

4. Subject to the provisions of Rule 5, every person who collects, moves, stores or disposes of any such timber as aforesaid without the permission of the Registrar of Boats, or otherwise than in accordance with the provisions of the Indian Forest Act, 1878, and the rules thereunder, shall be punished for each offence with fine which may extend to twenty rupees.

Exemption.

5. Nothing in Rule 4 shall render it punishable for the inhabitants of the islands of Sadhbella in the River Indus to collect drift wood floating on to or close to the island, provided that boats are not used for the purpose.

(*To be inserted below (C) containing Rules under Section 51 of the Indian Forest Act, 1878, at page 133 of the Compilation of Rules in force in the Revenue Department*).

(C1),—In exercise of the powers conferred by Section 51 of the Indian Forest Act, No. VII of 1878, as amended by Act No. V of 1890, the Governor in Council is pleased to make the following rules to regulate in the Province of Sind the matters specified in the said section, and to supersede, but so far only as the said Province is concerned, all previous rules on the same subject heretofore in force:—

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COMPILATION OF GENERAL RULES IN FORCE IN THE REVENUE DEPARTMENT.

Corrigendum.

In rule 1 of the rules framed under section 75 of the Indian Forest Act, 1878, published at page 133 of the Compilation of General Rules in force in the Revenue Department, after the words "Conservator of Forests" insert the words "or any Deputy or Extra Deputy Conservator of Forests specially empowered by him in this behalf."

[*To be inserted in paragraph 2 of Rule 1 of the Rules framed under section 75 of the Indian Forest Act, 1878, published at pages 133* et seq. *of the Compilation of General Rules in force in the Revenue Department.*]

In paragraph 2 of Rule 1 of the rules framed under section 75 of the Indian Forest Act, 1878, between the word "Forests" and the word "shall," the following words shall be *inserted*, namely :— [R. D. Notn. No. 7339, dated the 11th September 1905, *B. G. G.*, 1905, Part I, page 1253.]

"or, in the case of those reserved or protected forests in the Presidency proper lying within the territorial limits of his revenue jurisdiction, which have been classed as pasture or fodder reserve and handed over to the Revenue Department for management, the Collector of the District."

per cent. of its estimated value, and that in special cases the Conservator may increase the amount of the recompense to a sum not exceeding 50 per cent. of the value of the timber collected.

4. If the timber collected shall be proved to be the property of any person other than Government, such person shall be liable to pay to Government, under section 50 of the Act, the following amounts (namely):—

(1) on account of salving and collecting, the actual amount of recompense paid to the person who collected it;

(2) on account of moving, the actual cost incurred in moving it to the depôt for the reception of drift-timber;

(3) on account of storing, such fees as shall from time to time be fixed by the Conservator of Forests, with the previous sanction of Government, for the storing of timber at such depôt.

5. No person other than a Forest Officer authorized in this behalf by the Conservator of Forests shall mark any timber, or have in his possession any hammer for marking any timber to which these Rules refer.

6. Any person who breaks Rule 1 or Rule 5 shall be punished with imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

(D.) In exercise of the power conferred by section 75 of the Indian Forest Act, 1878, the Governor in Council is pleased to make the following subsidiary rules:—

1. One-half of the proceeds of fines and confiscations under the Act shall be paid by way of reward to the officers and informers through whose instrumentality the conviction was obtained, or the property liable to confiscation was discovered: Provided that the Magistrate who tries any case under the Act may, if he thinks fit, direct that a larger amount than one-half shall be so paid. (Notn. No. 5587, *B. G.G.*, 1879, Pt.I., p. 847,). 20-10-79

When more persons than one are entitled to the reward under this Rule, the Conservator of Forests shall determine the proportions in which it shall be divided amongst them.

2. No person shall cut, lop or in any way injure, appropriate, or remove any tree, or any loppings thereof, which is the property of Government grown or growing on lands belonging to or in the occupation of private persons; or knowingly and wilfully permit or abet the cutting, lopping, injuring, appropriating or removing of the same by any other person, without having first obtained the permission of the Collector, or, in the case of teak, blackwood or sandalwood trees, of the Conservator of Forests. (Notn. No. 343, *B. G G.*, 1883, Pt. I., p. 59.)

(Notn. No. 202, *B. G. G.*, 1885, Pt. I., p. 66.)

(E.) In exercise of the power conferred by section 75 (*c*) of the Indian Forest Act, 1878, the Governor in Council is pleased to make the following rules for the preservation of trees belonging to Government, but grown on occupied varkas lands to which Survey Settlement has been extended in the villages formerly comprised in the Sanján and Kolvan Tálukas of the Thána District:—

1. No person who is not entitled under the said Survey Settlement to any privilege, in respect of any tree belonging to Government growing in any varkas land to which that Settlement has been extended, shall fell, remove, destroy, lop or in any way injure any such tree, except under the order of the Assistant or Deputy Collector in charge of the táluka, or of the Divisional Forest Officer.

2. No person who is entitled to any privilege conceded under the said Settlement in respect of any such tree as aforesaid shall—

(*a*) exercise such privilege except in such manner and to such extent as may be allowed by any rule at the time in force prescribed in this behalf by the Collector of Thána under section 44 of the Bombay Land Revenue Code, 1879;

(*b*) fell, remove, destroy, lop or in any way injure any teak, tiwas or blackwood tree belonging to Government, growing in any such land as aforesaid, except under the order of the Assistant or Deputy Collector in charge of the táluka, or of the Divisional Forest Officer.

3. If an occupant of any such land as aforesaid wishes to clear the same for cultivation, he shall first of all make an application to the Assistant or Deputy Collector in charge of the táluka giving the following details:—

(*a*) his name, caste and residence;

(*b*) the village in which the land is situated, its survey number, the area of the land to be cleared, the name of the registered occupant;

(*c*) the numbers and kinds of trees to be cut down.

The Assistant or Deputy Collector, after making inquiry, shall forward the application with a report, to the Collector for orders.

If permission is given to clear the land, the trees when cut shall be at the disposal of the Forest Department.

Rules made by the Collector of Thána, in exercise of the power conferred by section 44 of the Bombay Land Revenue Code, 1879, for regulating the exercise of the privilege of cutting firewood and timber for domestic or agricultural purposes conceded under the terms of the Survey Settlement extended to the villages formerly comprised in the Sanján and Kolvan Tálukas of the Thána District to the occupants of varkas land subject to the said Settlement and to their tenants (namely):—

1. The said concession did not extend to teak, tiwas or blankwood trees (which are hereinafter called "the excepted trees"), and persons exercising the privilege must not remove, destroy, lop, or in any way injure any tree of any of those three descriptions.

2. The said concession did not extend to the removal of any tree or any portion of a tree for the purposes of sale or trade, and persons exercising the privilege must do so only for their own *bonâ fide* domestic or agricultural purposes.

3. Persons exercising the privilege for the purpose of obtaining *ráb* must not cut the leading shoot *(shendá)* of any tree which they lop for this purpose, nor touch young shoots or seedlings.

4. Persons entitled to exercise the privilege may, without previously obtaining permission, do any of the following things in any varkas land in their respective occupation, provided that the wood, &c., gathered or cut is for use within the limits of the village in which the gathering or cutting is made *(viz.)*:—

(1) gather fallen dead wood and, if that is insufficient, cut wood from any but the excepted trees, for firewood;

(2) cut wood from any but the excepted trees or bamboos for the purpose of making or preparing any agricultural implement;

(3) cut branches for ráb from any but the excepted trees;

(4) cut thorny bushes or bamboos for hedges.

*It is not intended by the rules to place any restrictions on the enjoyment of the privilege conceded to holders of occupied varkas lands at the time of the survey settlement, but simply to regulate the exercise of those privileges so as to enable Government officers to restrict them to their just limits and to prevent any reckless denudation of the varkas lands on which mainly the ryots have to depend for the supply of materials for ráb, as also to preserve the teak, blackwood and tiwas trees growing on such lands, which are the property of Government, from injury or loss.

As regards the rights of occupants to trees in varkas lands, the Umbargaon Patha should be treated on the same footing as the rest of the Dáhánu Táluka. (G. R. No. 209, 9th January 1885, R. D.)

(To be substituted for Government Notification No. 2799, dated the 31st March 1896 pasted in at page 135 of the General Rules in force in the Revenue Department.

Notification No. 5200, *B. G. G.* 1903, Part I, pages 961-962.

(F) In exercise of the powers conferred by Section 75, clause (*d*), of the Indian Forest Act, 1878 (VII of 1878), as amended by the Indian Forest Act, 1890 (V of 1890), and in supersession of Government Notification in the Revenue Department No. 2799, dated the 31st March 1896, the Governor in Council is pleased to make the following rule, with reference to Section 84 of the said Act amended as aforesaid, namely :—

Rule.

Whoever enters into any contract with any Forest-officer acting on behalf of Government shall, if so required by such Forest-officer, bind himself by a written instrument to perform such contract.

Explanation—A person, who makes a written tender for a contract, or who signs the conditions of an auction-sale at which he is a bidder, such tender or conditions of sale being on or in a form furnished by a Forest-officer for that purpose, whereby he

(*a*) binds himself to perform the contract for which he tenders or bids, in the event of his tender or bid being accepted, or

(*b*) binds himself not to withdraw his tender or bid during the time that may elapse before its acceptance or refusal is communicated to him,

shall be deemed to have been required by such Forest-officer to bind himself as aforesaid, and

in case (*a*) on the acceptance of his tender or bid, or

in case (*b*) on the making of his tender or bid,

to have bound himself accordingly, within the meaning of this rule ; and any such person need not enter into a separate written instrument for the purpose, unless specially so required by the Forest-officer with whom he contracts.

5. If any person entitled to exercise the privilege desires to cut wood from any but the excepted trees, or bamboos, in any varkas land in his occupation, for building purposes, whether the wood or bamboos are to be used within the limits of the same village in which they are cut or elsewhere;

and if any such person desires to do, in any varkas land in his occupation in one village, any of the things mentioned in Rule 4 for the purpose of conveying the wood, &c., so gathered or cut, to, and using the same in, any other village in which he has a house or land, he must first of all obtain permission.

6. The permission requisite under the last preceding rule may be granted as follows:—

(*a*) for cutting wood for building purposes;
(*b*) for cutting and removing bamboos to another village for any purpose;
(*c*) for gathering or cutting and removing firewood to another village in any quantity exceeding in the aggregate ten cart-loads for any one household during one year;

} by the Assistant or Deputy Collector in charge of the táluka.

(*d*) for any other purpose.

} by the Mámlatdár or Mahálkari.

But applications for permission may in every case be received and inquired into by the Mámlatdár or Mahálkari, who, if necessary, will obtain the order of the Assistant or Deputy Collector thereon.

7. Every application for permission under Rule 5 must be in writing and must contain the following particulars:—

(*a*) the name, caste and residence of the applicant;
(*b*) the village and survey number in which the wood, &c., is to be gathered or cut, and the name of the registered occupant;
(*c*) when wood is to be cut or removed, the kind of trees, their number and dimensions, and their estimated value;
(*d*) when firewood, bushes or bamboos are to be removed, the number of cart-loads;
(*e*) the time within which it is proposed that the wood, &c., shall be cut and removed;
(*f*) the village to which the wood is to be taken, if wanted for transport, and the route by which it is to be taken.
(*g*) the object for which the wood is required.

8. When permission is in any case given under Rule 5, a pass in the form hereto annexed will be prepared in four parts, of which one will be retained by the Assistant or Deputy Collector and three will be sent to the Mámlatdár or Mahálkari, who will keep one himself, send one to the Forest Ranger, and deliver one to the applicant. If the Mámlatdár or Mahálkari himself gives the permission, one part will be unused.

A pass granted under this rule will not render unnecessary any pass required by the rules in force in the Forest Department.

9. Permission shall not be granted for the cutting or removal of any wood, &c., of an amount which the officer empowered to grant permission deems unnecessarily large; and the said officer shall enter in the pass such limit of time as he considers reasonable within which the cutting or removal permitted by him shall be completed; and if such cutting or removal is not completed within the time so prescribed, the pass shall nevertheless cease to be in force, and application must be made for a fresh pass before any further cutting or removal is made.

Permit to cut or remove Wood, &c., from Occupied Land.

No.

Name of Cultivator.	Village.	Survey No.	Timber.		Firewood, Tahal, &c.		Object for which cut or removed.	Time allowed.	Village to which to be taken.	Signature of the Officer granting the Permit.
			Number and kind of Trees.	Value.	Number of Carts.	Name of Article.				

APPENDIX A. (*See Rule* 2.)

(*B. G. G.*, 1880, p. 692.) Routes by which alone timber and other forest produce may be moved into or from any of the following districts (namely) :—

1.—*Thána District.*

1. G. I. P. Railway Line.
2. B. B. and C. I. Railway Line.
3. Bombay and Agra Road.
4. Bombay and Poona Road.
5. Panvel and Campooli Road.
6. Bhor Ghát.
7. Kusur Ghát.
8. Sanján Bandar.
9. Sowta Bandar.
10. Apti Bandar.
11. Dysur Bandar.
12. Manor Bandar.
13. Sayeli Bandar.
14. Morambe Bandar.
15. Battan Bandar.
16. Mori Bandar.
17. Joo Nandruk Bandar.
18. Pishi Bandar.

2.—*Kolába District.*

19. Pen and Campooli Road.
20. Páli and Nágothna Road.
21. Dharamtar and Pen Road.
22. Mahád-Waranda Ghát Road.
23. Mahád and Ratnágiri Road.
24. FitzGerald Ghát Road.
25. Alibág and Revas Road.
26. Pimpri Ghát.
27. Alibág Bandar.
28. Durshet Bandar.
29. Amba Creek.
30. Revdanda Creek.
31. Dige Creek.
32. Sávitri River.

3.—*Ratnágiri District.*

33. Ratnágiri-Poládpur Road.
34. Harnai Bandar.
35. Khed—Amboli.
36. Chiplún—Kumbhár Ghát.
37. Amba Ghát—Ratnágiri.
38. Bhowra Ghát.
39. Phonda Ghát.
40. Vengurla—Belgaum.
41. Bánkot Bandar.
42. Anjarle Bandar.
43. Anjanvel Bandar.
44. Jaygad Bandar.
45. Ratnágiri Bandar.
46. Purangad Bandar.
47. Jaytápur Bandar.
48. Viziadrug Bandar.
49. Málvan Bandar.

4.—*Khándesh District.*

50. G. I. P. Railway Lines.
51. Bombay and Agra Road.
52. Taloda-Kukarmunda Road.
53. Shaka-Isarvari Road.
54. All roads upon which Forest Depôts may from time to time be established under Rule 15.

5.—*Násik District.*

55. G. I. P. Railway.
56. Bombay and Agra Road.
57. Bari Ghát Road.
58. Násik-Sangamner Road.
59. Chip Ghát.
60. Kanchan Ghát.
61. Sailbári Ghát.
62. Bábulna Ghát.
63. Nándgaon—Aurungábád.
64. Dhond-Manmád State Railway.

6.—*Ahmednagar District.*

65. Dhond-Manmád State Railway.
66. Násik Ahmednagar Road.
67. Násik-Poona Road.
68. Manmád-Dhond Road.
69. Ahmednagar-Poona Road.
70. Ahmednagar-Aurungábád Road.
71. Akola-Bari Ghát Road.

7.—*Poona District.*

72. G. I. P. Railway Line.
73. Dhond-Manmád State Railway.
74. Málsej Ghát.
75. Brámanwada Ghát.
76. Poona-Násik Road.
77. Poona-Panvel Road.
78. Poona-Pimpari Ghát.
79. Poona and Sátára Road by Kátraj Ghát
80. Poona and Sholápur Road.
81. Níra Bridge Road.
82. Supa-Dhond Road.

8.—*Sátára District.*

83. Poona-Kolhápur Road.
84. Shervat-Waranda Ghát.
85. Bhor-Pandharpur Road.
86. Sátára-Pandharpur Road.
87. Sátára-Bijápur Road.
88. Nira Bridge-Pusesávli Road.
89. Umraj-Pandharpur Road.
90. Amboli Ghát-Sátára Road.
91. Tivra Ghát-Sátára Road.
92. Chiplún-Karád Road.
93. Várna Valley Road.
94. Mála Ghát.
95. FitzGerald Ghát.
96. Koyna River.
97. Verna River.

9.—*Sholápur District.*

98. G. I. P. Railway.
99. Sholápur-Poona Road.
100. Sholápur-Secunderabad Road.
101. Sholápur-Bijápur Road.
102. Pandharpur-Biápur-Road.
103. Pandharpur-Pusesávli Road.
104. Pandharpur-Sátára Road.
105. Pandharpur-Phaltan Road.
106. Sholápur-Karmála and Ahmednagar Road.
107. Bársi-Vedshi Road.

[*To be pasted at page 138 of the Compilation of "General Rules in force in the Revenue Department," before "Additional Orders, Opinions, etc."*]

In exercise of the powers conferred by Section 25, clause (*i*), Section 31, clause (*j*), and Section 75, clause (*d*), of the Indian Forest Act, 1878 (VII of 1878), and in supersession of Government Notification No. 6254, dated the 25th July 1894, published at page 751 of Part I of the *Bombay Government Gazette* (except in regard to the Province of Sind), His Excellency the Governor in Council is pleased, with the previous sanction of the Governor General in Council, to prescribe the following rules to regulate hunting, shooting, poisoning of water and setting of traps or snares in the Reserved and Protected forests of the Bombay Presidency excluding Sind :—

[Notn. No. 5627, dated 18th August 1903, *B.G.G.*, 1903, Pt. I, pages 1021-1023].

1. The following acts are absolutely prohibited in all Reserved and Protected forests :

(*a*) the poisoning of rivers or other water, and the explosion of dynamite therein for the purpose of killing or catching fish ;

(*b*) the setting of spring guns ;

(*c*) the taking, wounding or killing of big game, other than tiger, panther, wolf, hyena, wild dog, pig or bear, over water or salt-licks ;

(*d*) wounding or killing the females of deer, antelope or bison ;

(*e*) wounding or killing any game birds or hares during the close season fixed in the Appendix.

2. The setting of snares or traps is prohibited in all Reserved and Protected forests except with the written permission of the Divisional Forest Officer.

3. (*a*) In any Reserved or Protected forest or portions of Reserved or Protected forests to which the Local Government may, for the purpose of strict conservation or for the preservation of animals which are becoming rare, or for both of these purposes, apply this and the following rules by a Notification published in the *Bombay Government Gazette*, hunting and shooting are prohibited except under a license to be obtained from the Conservator of Forests.

(*b*) Every license issued under clause (*a*) of this rule shall permit the holder only to hunt and shoot, and shall be valid for a period of one year from the date of its grant in any Reserved or Protected Forest in the Presidency to which these rules are made applicable under clause (*a*), subject to the condition that before it has effect in any Forest Division in which the licensee does not reside or exercise any jurisdiction, it must be countersigned by the Divisional Forest Officer.

(*c*) No such license shall entitle the holder to hunt or shoot more than two stags or bulls of each species of animal to be specified in the license, according to a list to be prepared for each Forest Division by the Conservator of Forests.

4. Licenses shall not be refused except for special reasons to be stated in writing.

5. Wounded game may be pursued into the forests of the Division adjoining that for which the license is valid or into a forest closed under Rule 8.

6. A license granted under these rules shall not be transferable.

7. Every person to whom a license has been granted under these rules, and who is found hunting, shooting, snaring or trapping in any forest to which these rules apply, shall, on demand by any Forest, Police or Revenue Officer, produce his license.

8. The Conservator may, on the recommendation of the Divisional Forest Officer and the Collector, declare that any particular forest or part of a forest is wholly closed for a term or years or annually for a specified season. He may also prohibit the taking, wounding or killing of any particular species of animal in any specified tract of forest, with a view to the preservation of such species, but any such order shall be subject to revision by the Commissioner. To such forests the validity of licenses granted under these rules does not extend or is modified accordingly : provided that gazetted officers whose jurisdiction extends to such forests, or persons holding licenses on which the Divisional Forest Officer has endorsed special permission to that effect, may kill pig, tigers and other dangerous or destructive animals in such forests. Such special permission shall not be given for a longer period than one month in any case.

9. If any person to whom permission under Rule 2 or a license under Rule 3 has been granted commits a breach of any provision of the Indian Forest Act, 1878 (VII of 1878), as amended by the Forest Act, 1890 (V of 1890), or of any rules made thereunder, he shall be liable to the penalty of having the permission or license, as the case may be, cancelled by the Divisional Forest Officer, in addition to any other penalty to which he may be liable under the Indian Forest Act, 1878 (VII of 1878), or otherwise. An appeal against the cancellation of the permission, or the license by the Divisional Forest Officer shall lie to the Collector, and a second appeal, in case of dismissal of the appeal by the Collector, to the Commissioner, whose decision shall be final.

10. In any case where the Divisional Forest Officer or Conservator thinks it advisable, he may direct that a Forest Guard or other person shall accompany the camp of any license-holder hunting or shooting in forests, with the object of seeing that Forest rules are not infringed by camp followers.

11. The word "hunting" as used in these rules includes tracking for the purpose of discovering the lie of wild animals, provided that any person holding a license is not prohibited from employing any number of trackers.

12. Nothing in these rules shall be taken to exempt any person from liability in respect of any offence by injury to the forest or its produce or of any other offence punishable under the Indian Forest Act, 1878 (VII of 1878), as amended by the Forest Act, 1890 (V of 1890).

13. Nothing in these rules shall be taken to cancel any privileges granted to resident wild tribes except by the express order of the Collector, or to preclude the grant of special permission by the Divisional Forest Officer or Collector to resident villagers on special occasions.

[*N.B.*—Forest in which wild tribes have been given the privilege of hunting will not generally be notified under Rule 3.]

APPENDIX.

The game birds referred to in Rule 1 (*e*) are as below, and the close season is fixed as follows :—

For		Close Season.	
Sand-grouse	Pterocles fasciatus ... ... / Pteroclurus exustus	1st April to 30th September.	
Pea-fowl	Pavo cristatus	Do.	do.
Jungle-fowl	Gallus sonnerati	Do.	do.
Spur-fowl...	Galloperdix spadicea ... ... / Galloperdix lunulata	Do.	do.
Partridge...	Francolinus vulgaris ... ... / Francolinus pictus ... ... / Ortygornis or Francolinus pondicerianus	Do.	do.
Rain-quail	Coturnix coromandelica	Do.	do.
Bush-quail	Perdicula argoondah or argunda / Perdicula asiatica ... ... / Microperdix erythrorhynchus ...	Do.	do.
Bustard-quail	Turnix pugnax ... ... / Turnix gondera, or tanki ... ... / Turnix dussumieri	Do.	do.
Bustard	Eupodotis edwardsi	Do.	do.
Lik-florican	Sypheotides or sypheotis aurita ...	Do.	do.
Whistling-teal	Dendrocygna arcuata or javanica...	1st June to 30th September.	
Cotton-teal	Nettopus coromandelianus ...	Do.	do.
Comb-duck	Sarcidiornis melanonotus	Do.	do.
Spot-bill-duck	Anas poecilorhyncha	Do.	do.

THE CLOSE SEASON FOR HARE IS 1ST APRIL TO 30TH SEPTEMBER.

Form of license to be granted by the Conservator of Forests, under Rule 3 quoted above.

Subject to the rules prescribed below, permission is hereby granted to Mr. of for a period of twelve months from the day of 190 , to the day of 190 , to hunt or shoot within any of the marginally noted Reserved and Protected Forests of the Bombay Presidency (including Sind) in which hunting and shooting are prohibited except under a license.

2. This permission shall not entitle the holder to hunt or shoot more than two stags and bulls of the following species of animal, *viz.*—

Rules.

[Here enter Rules 1 to 13 and Appendix.]

[Here enter Station.]

Granted this the day of 190 .

(Signature)_____

Conservator of Forests,
Circle.

10.—*Surat District.*

108. Tápti River.
109. Bánsda—Bilimora and Bulsár Road.
110. Dharampur and Bulsár Road.
111. Auranga River.
112. Ambika River.
113. Peint, Párdi, and Umarsádi Bandar Road.
114. B. B. and C. I. Railway.

The roads on which the following Forest Depôts are established, *viz.*:—

1. Wagai.
2. Jakria Bari.
3. Bábulna Ghát.
4. Karjai.
5. Amoonia.
6. Kanchan Ghát.
7. Chip Ghát.

11.—*Panch Maháls District.*

115. Dohad-Pate Road.
116. Godhra-Baroda Road.
117. All roads upon which Forest Depôts may from time to time be established under Rule 15.

12.—*Kánara District.*

118. Tinai Ghát Road.
119. Majali Road.
120. Mouth of the Kalinadi River, Sadáshivgad, Kodibág and Kudra Bandars.
121. Kárwár Bandar.
122. Belikeri Bandar.
123. Ankola Bandar.
124. Mouth of the Gangavali River, Munjgooni, Gangavali, and Gundbala.
125. Mouth of the Tudri River, Tudri, Agnashini, Mirjan, Hegde, Dewgi, Mouki and Oupinputtum Bandars.
126. Modeshwar Bandar.
127. Mouth of the Venktápur River (Sherali and Venktápur Bandars).
128. Bhatkal River (Bhatkal Bandar).
129. Gersapa Ghát Road to Talgoopa (Gersapa and Honávar Bandars).
130. Siddápur Road to Sorub *viâ* Warda.
131. Sirsi to Sorup *viâ* Banvasi.
132. Sirsi to Sammasgi *viâ* Dasankop.
133. Sirsi to Hángal and Bankápur *viâ* Pála.
134. Katur to Marguddi.
135. Mundgod to Bankápur *viâ* Sauvali.
136. Mundgod to Turrus *viâ* Wargatti.
137. Yellápur to Hubli *viâ* Kirvati.
138. Haliyál to Dhárwár *viâ* Mavinkop.
139. Haliyál to Belgaum—Madanhali.
140. Unshi Ghát Road *viâ* Supa and Shitovde to Belgaum.
141. Supa *viâ* Jagalbet, A'mod and Hemarge to Khánápur.

13.—*Dhárwár, Belgaum and Kaládgi Districts.*

Every made road maintained from Imperial, Provincial, Local or Forest Funds, and, with the special permission of the Conservator of Forests, any other road.

APPENDIX B. (*See Rule* 25, p. 132.)

Special Rules under Section 41 *of the Act for the Province of Sind.* (*B. G. G.*, 1880, p. 693.)

1. All words used in these rules and defined in Act VII of 1878 (The Indian Forest Act) shall be deemed to have the meaning respectively attributed to them by the said Act.

2. No timber or charcoal shall be brought within the Municipal limits of the cities of Shikárpur, Sukkur, Rohri and Hyderabad except by the roads and landing-places below mentioned (namely):—

Roads.	*Landing-places.*
Shikárpur, A'bad, Meláni and Ruk road ...	On the Sind Canal at Lakhi Tor.
Sukkur, A'bad, Meláni, and Shikárpur roads.	Sukkur Bandar.
Rohri—Multan road	Rohri Bandar.
Hyderabad—Road over old Phuleli Bridge, road over new Phuleli Bridge, Hajipur road, Gidu Bandar road,	Gidu Bandar, and near Bridge, over the new Phuleli.

3. No person shall remove any timber or charcoal from any Reserved or Protected Forest without a pass signed by the Forest officer in charge of such Forest, or otherwise than in accordance with the conditions of such pass.

Every such pass shall specify—

(1) the quantity and description of the timber or charcoal which it covers.
(2) the name of the person removing such timber or charcoal.
(3) the name of the Forest from which it is removed, and
(4) its destination.

4. No person, who wishes to remove any timber sufficient to make a cart or camel-load from any land which is not included in a Reserved or Protected Forest, shall remove the same from or to any place within twenty miles from a Reserved or Protected Forest, without obtaining from the holder or manager of the land, or if such land be Government waste

land, from the Tapedár of a tapá, a written certificate setting forth the quantity and description of the timber to be removed and the date of its removal.

5. No person shall bring firewood or charcoal, the produce of any land not included in a Reserved or Protected Forest, for sale into the cities of Shikárpur, Sukkur, Rohri or Hyderabad without a pass signed by a Forest Inspector, or a Tapedár, and setting forth the quantity and description of the firewood or charcoal covered thereby.

6. Every person in charge of any timber or charcoal, to which any of the last three rules is applicable, shall retain the pass or certificate relating to such timber or charcoal in his possession so long as the same is in transit, and shall, on demand, produce the pass or certificate for inspection by any Forest or Police Officer, and if such timber or charcoal is being conveyed into the city of Shikárpur, Sukkur, Rohri, or Hyderabad, shall produce the pass or certificate at the stations, called "Guards" established on the routes leading to those cities for examination.

(Notn. No. 5954, B. G. G., 1881, p. 611.)

The Conservator of Forests may, if he thinks fit, at any time, by an order in writing:—

(*a*) authorize any person who is the owner of timber, charcoal or other forest produce, or the agent of any such owner, to issue passes for the moving of any timber, charcoal or other forest produce which belongs to such person or to the person for whom such person is agent, and

(*b*) cancel such authorization.

When the Conservator of Forests authorizes any person under clause (*a*), he shall furnish such person from time to time with authenticated books of blank printed forms of passes.

Every pass issued by a person authorized under clause (*a*) shall specify—

1st.—The name of the person to whom such pass is granted.

2nd.—The quantity and description of timber, charcoal or other forest produce covered by it.

3rd.—The places from and to which such timber, charcoal or other forest produce is to be conveyed, and the route by which it is to be conveyed.

4th.—The period for which such pass is to be in force.

5th.—The officer or person to whom it is to be returned on the expiry of such period, or on the arrival of the timber, charcoal or other forest produce at its destination, whichever event happens the first.

The person authorized to issue passes shall pay for each book of passes such sum as shall from time to time be determined by the Conservator of Forests, and in the event of an order being passed by the Conservator of Forests under clause (*b*) shall at once return to the said Conservator every unused book and every unused portion of any such book then remaining in his possession, and shall be entitled to receive back the amount paid by him in respect of such unused book or portion of book.

No pass issued by any such person after the issue of an order under clause (*b*), and no pass issued by him which is not on a form supplied to him as aforesaid, shall have any validity.

ADDITIONAL ORDERS, OPINIONS, &c.

MEMORANDUM on the Legal Position of Government in respect of Forests and rights to Trees as ascertained by the results of recent Suits, circulated with Government Resolution No. 2493 of 4th May 1881, Revenue Department.

Proprietary right to trees follows the property in the soil.

The great principle which is recognized by the courts in all questions as to rights to trees is that the proprietary right to trees follows the property in the soil. Hence wherever it can be shown that land is the property of Government, the immediate inference is drawn that in the absence of any other circumstance which creates a proprietary right in the trees in the landholder the trees belong to Government.

Occupant under ordinary survey-tenure is not proprietor of the soil.

2. Thus in the case of *Govind Purshotam* v. *the Sub-Collector and Deputy Collector of Forests, Kolába,* (C. Bom. H. C. R. 188, A. C. J.) Couch, C. J., said "this is a case between landlord and tenant. There is nothing to show that the tenancy confers any other right than that of occupying and cultivating the land for 30 years, as guaranteed by the settlement. * * * The trees are timber trees growing on Government land, and the proprietary right to the trees is derived from the property in the land." The plaintiff's land had been surveyed and settled before the passing of the Bombay Survey Act of 1865, and Section 40 of that Act did not apply to his holding, because that section had no retrospective effect. It was not contended that he held the land on any tenure or on any special terms, which

implied proprietary right to the trees; and although he relied on Dunlop's proclamation* and on No. 10† of the old Joint Survey Rules, it appears to have been considered that he was not entitled to the benefit of either of these. This case, which is the earliest of the reported ones of the Bombay High Court on this subject, was decided in 1869.

Lessees are not entitled to cut down trees, except under special provisions or circumstances.

3. In an earlier case, that of *Ruttonji Edulji Shet* v. *the Collector of Thána and the Conservator of Forests* (10 W. R. 13, Pr. C.) the Privy Council followed the same principle. The plaintiff in that case held the village of Ghátkopur in the island of Sálsette on a lease granted to him by the Collector of Thána in A.D. 1845, and he claimed the right under that lease to fell unassessed trees in the village, and to apply them to his own use. Their Lordships of the Privy Council said: "At the time when this lease was made, the whole of the land and all the rights connected with the land, subject to such claims as third parties might have upon it, belonged to the Government. The trees upon the land were part of the land, and the right to cut down and sell those trees was incident to the proprietorship of the land. The appellant (plaintiff) therefore * * * must ground his title to these trees and the right to cut them down either upon this, that it is a necessary incident of the lease by reason of the objects of the lease; or *secondly*, upon some positive law; or *thirdly*, under some custom to be incorporated in the lease; or *fourthly*, under the express terms of the lease." And as none of these circumstances, which might affect the general principle, appeared to their Lordships to have been established, they held that the case of the appellant entirely failed.

In all cases the proprietary right to the soil is the first point to be determined.

4. The first question that arises in every case of a disputed right to forests or trees is, therefore, whether the Government is the proprietor of the soil, or the alienee (inámdár) or landholder. In the case of alienated lands the determination of this question sometimes raises difficult issues.

Leading case as to construction of written grants from the State, when proprietary rights are claimed under such grants.

5. The leading case on this point is *Váman Janárdan Joshi* v. *the Collector of Thána and the Conservator of Forests* (6 Bom. H. C. R. 199, A. C. J.). In that case the plaintiff (an inámdár) claimed the right to deal as he pleased with the forests in his inám village on the strength of his original sanads from Angria and the Peshwa. It was held by Melvill, J. (Gibbs, J., concurring) that "in a contest of this kind it is surely most just that such a rule as that by which English Courts of Law are guided in the construction of grants from the Crown, should be applied in the most stringent possible manner; and that the plaintiff's sanads should not be construed as conferring a right to the forests, unless such right be conferred in clear and unambiguous terms;" and that the sanads ought to "show plainly and unequivocally that the proprietorship of the land of the village was granted to the plaintiff's ancestor." It was allowed, quoting Westropp, J.'s learned judgment in another‡ case, that sanadi grants in inám, &c., are "generally speaking more properly described as alienations of the royal share in the produce of the land" (*i.e.*, of the Government revenues) "than grants of land." The sanads in question contained no such words as necessarily indicated a grant of the property in the soil. They did not contain the words common in Maráthi sanads, when the property in the soil is granted, *viz.*, *jal*, *taru*, *tran*, *páshán*, *nidhi*, *nikshep*, (*i.e.*, water, trees, grass, wood, stone and buried or concealed treasure.) It was therefore held that they conferred only a right to the revenues of the village, and did not operate as an alienation of the soil and therefore gave the plaintiff no right to the timber growing on the soil ("for," said Melvill, "the owner of the land is owner also of the timber which grows upon the land").

The same principle applied to the decision of a khot's claim to forests, when the khot based his title on a sanad.

6. In the decision of *the Conservator of Forests* v. *Nágardás Saubhágyadás*, known as the Pigonde Case (High Court's Printed Judgments for 1875, pp. 325—332), the same principle was followed. The plaintiff in this instance was a khot of the Kolába District, and he claimed a right to the trees and forests of the villages of Pigonde to the extent of his $\frac{1}{4}$th share in khotki. But although the suit related to a khoti village, the plaintiff based his claim on certain sanads, and the khot, considering that his rights were "laid down with sufficient distinctness in the documents thus propounded by him" did not go into the question of the general rights of khots§ and found that the sanads relied upon did not contain any such words as those above alluded to and were not intended to convey any proprietary right in the soil. This decision has since been confirmed on appeal by the Privy Council (L. R. VII. Ind. App. 55; S. C. I. L. R. 4 B. 264). In the judgment of Westropp, C. J., there is the following passage which states the opinion of the Court in very clear language:—

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*See *infra*, para. 17. †See *infra*, para. 18

‡*Krisnaráo Ganesh* v. *Rangráo* (4 Bom. H. C. R. 1, A. C. J.)

§ But although the general rights of khots were not considered in this case, Melvill, J., referring in his judgment in *the Collector of Ratnágiri* v. *Raghunáthráo bin Rámájiráo Sarve* (H. Ct.'s Printed Judgments for 1875, p. 324) to the decision therein said: "It has been decided in Regular Appeal No. 15 of 1869 (and in this decision we concur) that a khot has no right to cut timber, either as a khot, or by virtue of Mr. Dunlop's proclamation, unless he can prove the grant of a proprietary title in the land of the village."

"In *Vykunta** v. *the Government of Bombay*, decided by my brother West and myself on the 1st May last, we pointed out that when the State grants a village *eo nomine*, without further words, the proprietorship in the soil does not necessarily, or even ordinarily, pass to the grantee, and that the latter only takes thereby the royal share in the produce of the village, or so much of that share as the sanad may purport to grant. Mr. Mountstuart Elphinstone is very clear on that point (see his History of India, 4th Edition, p. 74, note)."

There is no part of the judgment in the Kánara Land Assessment Case which states this point in these very distinct terms, but the parts of that judgment to which the Chief Justice has referred are stated by himself in a marginal note to be "12 Bom. H. C. R. App. pp. 1, 33, 34 and especially 39, 40."

Limitations of the rigid rule of construction of written grants laid down in the leading case.

7. In this judgment in the Pigonde Case, Westropp, C. J., further observed, with reference to the rule of construction of grants from the Crown that he "adopted the rule laid down authoritatively on behalf of Her Majesty's Privy Council by Sir John Coleridge in *Lord* v. *the Commissioners of Sydney* (12 Moor P. C. 497) that although their Lordships 'did not intend to differ from the old authorities in respect to Crown grants,' yet they held that 'upon a question of the meaning of words, the same rules of common sense and justice must apply whether the subject-matter of construction be a grant from the Crown or from a subject,' and that 'it is always a question of intention to be collected from the language used with reference to the surrounding circumstances.' If those guides to a satisfactory construction fail, but not otherwise, the ancient rule that 'if the king's grant can enure to two intents, it shall be taken to the intent that makes most for the king's benefit ought to be applied.'" In *Ráoji Nárayan Mandlik* v. *the Mámlatdár of Ratnágiri* (I. L. R. 1 Bom. 523), it was held that "if words are employed in a grant which expressly or by necessary implication indicate that Government intends that so far as it may have any ownership in the soil that ownership shall pass to the grantee," it is not permissible to anybody to say that the ownership did not so pass, "unless there are in the grant such detailed provisions as show that such words are limited in their operation."†

Where there has been an adjudication of title, the grantee's title depends, not upon his original sanad, but upon the terms of the adjudication.

8 These are all the important decisions hitherto passed on the question of the construction of sanads or other written grants. But it is important to note that it has been ruled that where there has been a formal adjudication of title, the right of the grantee depends, not upon the terms of the original grant, but upon the meaning of the order of adjudication. Thus in *Vásudev Pandit* v. *the Collector of Poona* (10 Bom. H. C. R. 471), West and Nánábhái Haridás, JJ., held that the plaintiff's title rested, not upon the sanad granting the inám, but upon the construction of the decision passed by the Inám Commissioner under Rule 1, Schedule B. of Act X of 1852, for continuing the village; and the words in the decision "*báki darobast gáv chálváva*" (let the whole remainder of the village continue) were construed as "an adjudication of all proprietary rights free from exceptions of any kind, except those specified." Original sanads which have of late years been superseded by summary settlement sanads would also, no doubt, upon a similar principle, be left out of consideration; the title of the inámdár be held to depend entirely upon the meaning of the latter sanads. These summary settlement sanads continue inám villages and lands for ever as "the private property" of the holders, and it was held in the last-named case (10 Bom. H. C. R. 471), that it was an invasion of the right of an inámdár whose lands had been recognized by Government as his private property to quarry stone or take sand from those lands without his permission or authority. What is there said of quarrying stone or taking sand would apply equally to cutting timber, all these rights being incidents of the general proprietorship of the soil.

Rules for investigation of claims not based on written grants.

9. Alleged proprietary titles are not always based upon written grants. In all cases, however, the spirit of the above rule of construction of grants would, no doubt, be observed in weighing the value of any evidence that might be adduced against the Government. In the Kánara Land Assessment Case (12 Bom. H. C. R. 214, 215, App.) it was said that "if it be the duty of the Court not to enforce the written grant of the Crown unless it be clear and unambiguous, it is not too much to say that at the very least, it is equally incumbent on the Court to ascertain beyond doubt that the Crown has intended to part with its prerogative to which it has succeeded by right of conquest, when the evidence offered in

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*This is the celebrated Kánara Land Assessment Case reported in 12 Bom. H. C. R. App. 1—224.

†The law officers of the Government of India have recently considered the applicability in this country of the English rule for the construction of Crown grants in connection with the question of the right of Government to mines and minerals. They hold it to be inapplicable (1) where grants have been made in consideration of a money payment, and (2) where the grants have not been made in exercise of a prerogative (see Government of India's letter to Secretary of State, No. 7, of 1st September 1879, para. 4, published in Supplement to *Gazette of India* of 22nd May 1880, p. 864).

proof of such an alienation is not any grant or sanad or any entry in a Government book * * * but is sought to be spelt out against the Crown from the acts and statements of its officers."

Property in the soil of cultivated land of ordinary landholders.

10. The right to trees in lands not held upon any inám tenure but under one or other of the ordinary ancient tenures of the country depends upon the same question, *viz.*, whether the property in such lands belongs to the sovereign power of the State or to the landholder. This question was very thoroughly considered in the Kánara Land Assessment Case. After a full review of the authorities, Westropp, C. J., and West, J., arrived at the conclusion in that case, that "the proprietary right of the sovereign derives no warrant from the ancient laws or institutions of the Hindus, and is not recognized by modern Hindu lawyers as exclusive or incompatible with individual ownership." (12 Bom. H. C. R., 53, App.). Under the Muhamadans also the holders of cultivated lands were shown to have been regarded as the owners thereof (*ibid*, 53—57). Proprietorship in the soil was expressly recognized as existing in the bhágdári and narwádári villages in parts of Gujarát (*ibid*, p. 43)* and it was so strongly stated that there is reason to believe that the *mirási* tenure in the Bombay Presidency carries with it private property in the soil (*ibid*, pp. 46-7, 43, 50, 51 and 70) that there is little doubt that if the point had been directly in issue, it would have been held that mirasdárs also are proprietors† of their lands, just as it was held (*ibid*, p. 1, head note) that the *mulavargdár* in Kánara "enjoys an hereditary and transferable property in the soil."

Proprietorship of waste lands belongs to Government.

11. But whatever may be the rights of rayats in respect of their cultivated lands, it is now clearly established that waste lands under the ancient Hindu and Muhamadan laws, as well as under the British law now in force in this Presidency, belong to Government. This was clearly laid down in the Kánara Land Assessment Case (12 Bom. H. C. R., 57-9 App.), in Pendse's Case (High Court's Printed Judgments for 1879, p. 276), which will be more particularly referred to in the next paragraph, and in the Kánara Forest Case (I. L. R. 3 Bom. 533-4, 542 and 546-7). The two last-named cases are the two important suits in which respectively the rights of Government to trees in *varkas* lands in the Konkan and in *kumri* lands in Kánara have been recently contested.

Leading case as to right in *varkas* in the Konkan.

12. In *Wásudeo Bháskar Pendse* v. *the Collector of Thána* (High Court's Printed Judgments for 1879, pp. 274—287) the plaintiff sued "to establish his rights as against the Government to cut down all trees growing upon certain lands held by him in the Narsápur or Karjat táluka of the Thána district." He claimed a proprietary right in his lands by virtue of his being a *sutidár*, and he alleged that a *sutidár* in the Konkan was equivalent to a *mirásdár* in the Deccan. Melvill and Kemball, J.J., who decided the case, felt "no doubt that there is such a tenure as a *suti* tenure," but were unable on the imperfect evidence before them to determine "whether a *sutidár* in the Konkan has the same proprietary title in the soil of his estate as a mirásdár in the Deccan."‡ But they deemed it unnecessary to decide this point,§ because (owing to a mistake in the conduct of the suit in the District Court) the plaintiff's right to the trees in his rice fields had been conceded by Government, and it was clear that it "was only in respect of plaintiff's rice fields that any *suti* tenure could be set up," the "*varkas* land never being entered in the Government accounts as *suti*, but being carefully distinguished from it."

Varkas land held to be waste land.

13. The judgment of the High Court in this case was therefore limited to a consideration of the respective rights of Government and of the plaintiff in his *varkas* lands. *Varkas* is defined in the judgment as being "land on which, in accordance with the mode of cultivation in use in the Konkan, the cultivators cut grass, brushwood and branches of trees to be burned as manure (*ráb*) on their rice fields. This and not cultivation is the use to which *varkas* land is ordinarily appropriated; but patches of such land are from time to time used

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* Its existence in talukdári villages is recognized by section 20, Bombay Act VI of 1862, as regards villages which have been managed by the Táluksári Settlement Officer, and a Government Resolution extended the same recognition to táluksári villages which did not come under management.

† In Pendse's case (Printed Judgments for 1879, p. 275) Melvill and Kemball, J.J., said: "If he (the plaintiff) were a mirásdár we should probably on the authority of Mr. Mountstuart Elphinstone (*a*) hold that he was proprietor of his estate and of all trees growing upon it."

(*a*) Revenue Selection, Vol IV., pp. 159, 160.

‡ The plaintiff also made some attempt to establish his proprietary title on the ground of his being a "*pándharpeshá*;" but the Court held that *pándharpeshas* had no greater proprietary rights than any other occupant, the only privilege they enjoyed being a certain remission of the Government assessment, and even that privilege had been discontinued since A.D. 1864.

§ In a later case, however, between private parties, *Wáman Bhiwáji* v. *Vináyak Rámchandra Lakshmanji* (High Court's Printed Judgments for 1879, p. 429) the same Judges said that "*sut*" is a "term which may be taken to be equivalent to the '*mirási*' in the Deccan, and to mean 'and of which the holder is proprietor subject to the payment to Government of a certain defined share of the produce.'

for raising scanty crops of inferior grain." The important points determined with respect to such lands are:—

(1) that *varkas* lands must be regarded to all intents and purposes as waste lands and, therefore, according to the settled law concerning waste lands, belong to the State;

(2) that neither the use, with the acquiescence of Government, of defined portions of such lands for obtaining manure, nor the occasional and sporadic cultivation for several generations of patches of such land can be held to create a proprietary title.

Kánara Forest Case.

14. The claim in the Kánara Forest case (I. L. R., 3 Bom. 452—785) although of very much greater magnitude in its extent, was very similar in its nature to the above. Kumri cultivation consists in the clearing and cultivating of spots in the jungles or forests, which after a season or two are again abandoned for other similar spots. The judgments recorded by Green and West, J.J., in the case are extremely lengthy and complicated, and as the suit related principally to questions of a purely local nature, they have been summarized in a separate memorandum. But the following points of general applicability may be noted as having been determined in it (*viz.*):—

(1) That under British rule the principle from which we must start is that waste lands belong to Government (*ibid*, p. 584).

(2) That the levy of a tax does not necessarily make a proprietor, but that to levy money from a ryot on account of any land implies a knowledge that he is there and in some way beneficially connected with it (*ibid*, pp. 578, 586).

(3) That for whatever purpose land may be used, tacit acquiescence by Government in its occupation wherever definitely invited and plainly manifested, has the effect of creating decisive test of ownership (*ibid*, 578-79).

(4) That mere temporary occupation of spots in a forest "without appropriation of any spot for more than some months or a year" is not necessarily a property or possession (*ibid*, 581).

(5) That as there must be certainty in a grant as to the area conferred, so there must be certainty as to area, or at least as to the identity of the object occupied, if the occupation is to raise the presumption of a grant, or of acquiescence in a definite occupation. There must be the "essential elements of possession, a fixed, a definable, an exclusive occupation, * * * present to the perception of the parties" (*ibid*, 585).

(6) That the acquiescence of Government in the levy by another person of fees for the cultivation of land within limits which that person claimed as his own, and the fact of Government's refraining from levying such fees direct and assessing such person's income from the fees levied by him, must be held to mark Government's recognition of such person's ownership (593, 636).

(7) That "a property in the soil must not be understood to convey the same rights in India as in England." Under one system an ownership may subsist unimpaired side by side with a limited right in exercise of which acts may be done which under another system would be regarded as contradictions of any ownership (*ibid*, 715).

Prescriptive or customary rights to trees in Government lands impossible.

15. Failing proof of absolute ownership of the soil, an attempt is sometimes made to establish a prescriptive or customary right to the trees on Government lands. This however, it has now been ruled, cannot be done. In *Váman Janárdan Joshi* v. *the Collector of Thána and the Conservator of Forests* (6 Bom. H. C. R. 201, 202, A. C. J.), Melvill, J., held (Gibbs, J., concurring) that the plaintiff could not acquire by prescription a right to dispose as proprietor of all timber growing on another's land. Again in *Vásudeo Bháskar Pendse* v. *the Collector of Thána* (High Court's Printed Judgments for 1879, p. 278) the same Judge (Kemball, J., concurring) said, it is clear upon authority that if the soil be the property of another, the plaintiff cannot, either by custom or prescription, acquire an unlimited right to cut down trees growing upon that soil. "A *profit a prendre* in another's soil cannot be claimed by custom, however ancient, uniform and clear the exercise of that custom may have been" and "an unlimited *profit a prendre* on another's soil cannot be claimed by prescription."

But partial rights of individuals in or over trees not incompatible with the general ownership of Government and *vice versâ*.

16. West, J., held to the same effect in his judgment in the Kánara Forest Case (I. L R., 3 Bom. 640-641), but he pointed out that "the right to cut timber is" nevertheless "separable as a legal notion, from the residual ownership with which it is usually joined in England; and in this country the reserve of the forests or of timber trees of special value by the State in a grant of land is a general and well understood incident of the estate thus granted. In Gujarát it is not unusual for the owner of trees and the owner of the soil in which they grow to be different

persons. This custom may have sprung from the Mahomedan law. It does not necessarily follow, therefore, from the cutting of trees by the Government that the Government asserting an unqualified ownership of the soil, extruded every private claimant." That particular rights over, or in respect of, the trees in certain lands may exist without carrying with them an absolute right of property over the whole is illustrated in the Pigonde Case (High Court's Printed Judgments for 1875, p. 332), in which the Chief Justice said: "A practice for the khot to charge fees to other persons for cutting firewood does not, in my opinion, afford any solid ground for contending that he had any right to teak or other valuable trees. It might as well be contended that a right to firebote in England conferred upon the tenant a right to cut down oak and other valuable trees."*

Effect of Dunlop's and Harris' proclamations.

17. Both in the South Konkan and the Kánara Districts, certain proclamations (in the South Konkan, Dunlop's proclamation of A.D. 1824, and in Kánara, Harris' proclamation of A.D. 1823) are relied upon by the landholders as giving them rights to timber. The two proclamations which are very similar are to be found quoted at 8 Bom. H. C. R., 2 A. C. J. and I. L. R., 3 Bom. 728, respectively. With respect to the former it was admitted for the plaintiff in the Pigonde Case and the principle of the admission was endorsed by the Court (see Kemball, J.'s judgment., p. 327) that unless a khot was proprietor of his land, it neither conferred upon, nor confirmed to, him any rights in the timber trees; and it was also held in the Kánara Forest Case that the latter related only to timber in proprietary estates (I. L. R., 3 Bom. 690-691). In *the Collector of Ratnágiri* v. *Venkatráo Náráyen Sarve* (8 Bom. H. C. R., 1 A. C. J.), it was argued on behalf of Government that Dunlop's proclamation had been cancelled by a subsequent Government notification issued in 1851; but it was held, "that Government cannot, by issuing a subsequent proclamation, resume a grant made by a previous proclamation, inasmuch as it cannot, any more than a private person, without the consent of the donee, revoke a gift actually made."

Other special grants and recognitions of private rights to trees.

18. In *Vásudeo Bháskar Pendse* v. *the Collector of Thána*, when it had been held in the first place that the *varkas* lands in dispute were the property of Government, and therefore that the trees standing on them were *primâ facie* also the property of Government, the plaintiff endeavoured to establish his title in virtue of "special grants and recognitions made by Government from time to time." The decisions recorded by the Court upon the various points thus raised are only applicable to the district of Thána, and some of them, perhaps, to certain tálukas only of that district, but as indicating the nature of the questions which arise in such cases, it may be useful briefly to state them here. The Court held that—

(1) in the Thána district, previous to the introduction of the Revenue Survey—

(*a*) the felling of teak trees was universally prohibited and the right of Government to do this was never questioned;

(*b*) the right to all other trees standing upon, or to be afterwards planted upon their own lands was conceded to the occupants;

(*c*) *varkas* lands were treated as Government waste and not as private lands;

(*d*) the right of cultivators to take "*ráb*" from *varkas* lands for manuring their rice fields was recognized; but

(*e*) they were prohibited from felling trees of certain specified descriptions, although permitted, as a favour, to cut common wood for domestic use but not for trading purposes:

(2) there is considerable confusion about the introduction of the Joint Survey Rules into the Konkan, but Captain (now Colonel) Francis' order for introducing them must either be held to have been unauthorized and invalid, or else that order and a

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* With reference to the rights of khots to timber and to land in their villages, the recent decisions of the High Court reported at I. L. R., XI B. 680 and I. L. R., XII B. 535 required to be noticed. The head-note in the first of these two cases contains the following:—"The mere fact of the defendants being vatandár khots did not make them proprietors of the cultivated land in the village; proprietary rights are not essential to the conception of a khotship; in levying *thal* on the lands tilled, the defendants did not assert, they certainly did not establish, a proprietary right to the soil." The judgment in the case reported at I. L. R., XII B. 535 contains the following passages: "(1) In the absence of a sanad expressly granting it, the ownership neither of the soil nor of cultivated or uncultivated land passes by the grant of the vatandár khotship. (2) The grant of the vatani khot did not make the khot a perpetual tenant of Government in respect of all lands in the village except dhára lands. *Held* on the authority of Tajubai's case (3 B. H. C. R. 132, A. C. J.) and Ramchandra Mahajan *v.* the Collector of Ratnájiri (7 B. H. C. R., A. C. J., at p. 43) that a permanent relationship was created between the Government and the khot which could not be interfered with as long as the settlement of 1788 was in force except with the khot's consent, and, therefore, that Government could not when the paháni of 1788 was in force, withdraw a thikán (included in that paháni of the village) from the khot's cultivation. (3) In the absence of evidence to show that the right to the jungle produce was intended to be reserved to Government, the khot was entitled to cut down brushwood whether as a source of revenue or for the purpose of bringing the land into cultivation. (4) The Khot had no right to cut timber in forest and uncultivated lands whether by virtue of his *khotship* or Dunlop's proclamation.

subsequent order issued by him for modifying Rule X.* must be taken as constituting a single proceeding, so that either Rule X. was not introduced into the Konkan, or it was introduced with a reservation of the rights of Government in certain trees;

(3) the present intentions of Government and of the Legislature appeared from Government Resolution No. 6646, dated 27th November 1875, and from the Bombay Land Revenue Code Bill (*a*) to be to reserve teak and blackwood trees only, and therefore that the plaintiff's title to cut trees in the *varkas* land of which he is survey occupant extends to all trees except these;

(*a*) See section 40 of the Revenue Code, which has since become law.

(4) as regards *varkas* land in the plaintiff's occupation but not included in any survey number, he is not entitled to cut down any trees.

Applicability of section 40 of the Revenue Code.

19. In unalienated lands which are not the property of their holders and which have been subjected to a survey settlement, the rights to trees are now defined by section 40 of the Bombay Land Revenue Code.

MEMORANDUM BY THE L. R.—SECTIONS 4 AND 9 OF THE FOREST ACT.

Two questions have been submitted to Government for decision:—

First—Whether any land other than forest land or waste land which is the property of Government or over which the Government has proprietary right or to the whole or any part of the forest produce of which the Government is entitled can be constituted a reserved forest under the provisions of Chapter II. of Act VII of 1878?

Secondly—Whether the rights referred to in section 9 of that Act include right of way or right to a water-course?

2. On the first question it is quite clear that Chapter II. relates to forest land or waste land described in section 3 and to no other land.

3. Section 3 specifies what land it shall be lawful for the Government to constitute reserved forest; namely, forest and waste land belonging to Government. The words "any land" in section 4 cannot include any other land than what it is lawful for the Goverment to constitute a reserved forest. The Government cannot notify cultivated lands, whether alienated or unalienated, as forest reserves, except by first acquiring all the rights of ownership and converting them into waste lands. The object of section 10 is to meet the case of any claim that may possibly be made of private ownership in or over such forest land or waste land or any portion thereof as is notified under section 4, and to empower the Forest Settlement Officer to exclude such land from the proposed forest or obtain a surrender of it from the claimant or acquire it under the Land Acquisition Act, 1870.

4. With regard to any land other than forest land or waste land belonging to Government, if required for the purposes of the Forest Act, 1878, section 83 provides that it can be treated as required for a public purpose and dealt with under the Land Acquisition Act, 1870. When such land has been so acquired, it becomes, with all rights in or over the same, public property, subject always to the right of way and all other rights of the public or of individuals legally subsisting. If Government does not dispose of it in any other way or for any other purpose, it becomes waste land belonging to Government, and may be constituted a reserved forest in the manner provided in Chapter II. of the Forest Act.

5. On the second question right of way and right to a water-course are included in the rights referred to in section 9.

6. The Forest Settlement Officer is appointed to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within the specified limits of the proposed forest, and to deal with

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* No. X. of the Joint Survey Rules was as follows:—

"Proprietors of inám, judi and mirás lands, having possession of the same, have the right of cutting down or otherwise disposing of all trees growing therein, *and also holders of Government fields, of which they have been in uninterrupted occupancy from a period anterior to the age of the trees, or for a period of twenty years, or who have purchased the trees under the provisions of Rule 2.*"

Captain Francis' order for modifying this rule in the Konkan was as follows:—

"Clause 10 provides that the proprietor of a field has the right to cut down trees growing in the field. Such right must be understood to exist in this petha: but this clause does not authorize the felling of trees which are under the conservation of Dr. Gibson, the Conservator of Forests; they should be preserved as hitherto."

the same as provided in Chapter II. He has, therefore, two principal duties to attend to; first, to make a proper inquiry; and, secondly, to dispose of the claims in accordance with the provisions of the said chapter.

7. His enquiry is to be made not only into all claims duly preferred, but he is to search for the *existence* of any rights which are not claimed, by examining Government records, taking the evidence of persons likely to be acquainted with any such rights, and personally surveying and mapping out the proposed forest.

8. The rights so contemplated are classed as follows:—

(1.) Right of pasture.
(2.) Right to forest produce.
(3.) Right of way.
(4.) Right to water-courses.
(5.) All other rights in or over any land.

9. Section 10 provides how the Forest Settlement Officer shall deal with the last class of rights.

10. Sections 11, 12, 13, 14 and 15 provide how the Forest Settlement Officer shall deal with the first and second classes of rights.

11. The third and fourth classes relate to certain incorporeal hereditaments or easements attaching to the land which is the property of Government. It is obvious that when once after due inquiry a claim to any such right is admitted, or when once the existence of any such right is discovered, the fact of the right is sufficiently established.

12. Where no claims are preferred in respect of these rights, it is undoubtedly the duty of the Forest Settlement Officer not to overlook their existence and not to neglect to make every possible enquiry to ascertain whether any such rights do exist. It depends on the Forest Settlement Officer to prevent any hardship occurring to villagers living near proposed forests in respect to the use of public pathways or of water-courses in the forests; and it is not likely that any such rights, where they are clearly defined and ascertainable, will become extinct through the operation of section 9. Any right of this description which is so obscure as not to be claimed at the proper time, or to come to knowledge after careful search has been made, cannot be of much worth.

13. It is clearly the intention of the Legislature that all existing rights of way or to water-courses should be carefully ascertained and preserved intact unless it is found convenient to stop such ways or water-courses and substitute others for them, as provided by Section 24.

14. Any person who shall enter a forest except by such public or private way will be a trespasser. An unlawful entry on another's land is a trespass; but it is not an offence punishable under the Penal Code, which only contemplates the offence called "criminal trespass," *i. e.*, trespass with intent to commit an offence or to annoy the person in possession. But unlawlul entry on a reserved forest is a forest offence punishable under the Forest Act, 1878. (G. R. 3112 of 31st May 1881.)

(RULES FOR THE ASSIGNMENT OF LAND FOR KUMRI CULTIVATION.)

(1) The period of fallow should never be less than ten years after cultivation for two.

(2) Personal inspection should annually be made both by the Collector and the Assistant Collector with a view to ascertaining that the prescribed limits of the Kumri assignment in each case have not been exceeded.

(3) Kumri assignments should, as far as possible, never be allowed within 100 yards of streams running as late as December, and on the upper third of the slopes of hills. (See G. R. 5319 of 9th August 1882.)

Sanad to be examined before Inámdár is allowed to fell.

It is advisable that the sanad should be examined in every case before forest is allowed to be cut down in inám villages. (G. R. 6457 of 29th October 1881.)

Rights of Government on Trees in Waste Land.

Enjoyment of the produce of trees on Government waste land, by custom or under a lax system of administration, does not amount to a recognition by Government of a right which the Forest Department must respect.

The exception in section 41 of the Land Revenue Code in favour of private rights extends to lands set apart for forest reserves under section 38. (G. R. 6550 of 3rd November 1881.)

Extract of Instructions as to Forest Settlement.

Under section 13 of the Forest Act a Forest Settlement Officer should record, in respect of a right admitted, the extent of such right, and then, if he determines to proceed under section 14, clause (*c*), he should record an order continuing the right and declaring it to be exercisable only at such seasons and within such portions of the forest and under such rules as the Local Government may from time to time prescribe.

The Act distinctly provides that the Settlement Officer shall determine the extent of the rights in each forest under settlement, and shall then consider whether, having regard to the maintenance of the forest, they can be continued. If so, he arranges for their continuance; otherwise he commutes the rights. If he continues a right, the Local Government can make rules to regulate its exercise, but these rules must not substantially detract from the rights of either the claimant or the State. Such rules are not intended to define the legal status of rights claimed, but only to control the exercise of rights admitted, for the power to make such rules is limited, and does not extend to fixing the number of cattle which a right-holder may send into the forest, or the amount of produce he may extract. An order admitting a claim to rights of pasture or forest produce cannot therefore be limited by any declaration in rules framed under section 14 (*c*) of the Forest Act.

It is of vital importance that only such rights should be recorded, under sections 11 and 13 of the Forest Act, as are proved to exist, and that they should be recorded only to the extent thus proven.

There is nothing in the Forest Act that justifies the Forest Settlement Officer in providing for the prospective wants of non-existing settlers or of a future and possibly more numerous generation; nothing that permits the concession by a Forest Settlement Officer of more extensive rights than those to which he finds claimants to be entitled at the time of settlement. The rights claimed must be actually existing rights, vested in an individual or person, or in a definite body of persons like a number of co-owners or a village community.

They may be rights in gross unconnected with the ownership of immoveable property (houses or land), or they may be rights attached to the ownership of such property. They may be rights enduring only for a certain period or for the life of the person in whom they are vested, or they may be rights which will pass to the heirs of that person, or pass in perpetuity with the property to which they are attached. But they must be existing and vested in some person or body of persons who can claim them at the time of settlement.

If the Forest Settlement Officer is permitted to provide for indefinite prospective wants of an indefinite prospective number of right-holders, he may be providing for the gradual absorption and final extinction of the actually existing rights of the State.

A Forest Settlement Officer goes beyond his province in providing for rights in favour of *all the inhabitants* of the village, present and future, including persons who could not claim as successors to any persons now entitled, but only by virtue of some original and independent right acquired simply by the fact of their becoming inhabitants. The rights should be recorded either in favour of the several individuals composing the village or of the village community as a body in possessson of the village lands.

There might possibly be a local customary law which would confer a right on every person directly he became an inhabitant, and it is true that the recent tendency of the English law courts has been to recognize such customs more freely than would have been the case several years ago. It would, however, be difficult under any circumstances to establish a custom giving a right of a nature of a *profit à prendre*, and the Forest Act not only makes no provision for rights to arise in future in this way, but even bars the accrual thereof in section 22. Whenever, therefore, rights have been recorded in the names of individuals, and it is desirable that new inhabitants of a village should enjoy the same

advantages as established right-holders, this can be effected as a matter of favour by executive arrangements, but no provision should be made for it under sections 13 and 14 of the Forest Act.

It is conceivable that a claimant might establish a right of such a nature that it would probably in course of time entitle him to larger benefits from a forest than he was entitled to at the time of settlement. For instance he might show that he was entitled to pasture for *all* cattle employed by him in the cultivation of his land, and he might be in possession of extensive waste land, which he was gradually bringing under cultivation—a process which of necessity would tend to increase the number of his cattle. Here the Forest Settlement Officer, though dealing only with "actually existing rights," would also have to take into account "prospective wants." In such a case, which could probably only arise when the right claimed is based on a former grant, revenue settlement or sanad, it would seem reasonable to admit the rights of the proprietor within a maximum, which should be determined with reference to the rights actually enjoyed by him at the time of making the record and to the potential capabilities of the forest. But a maximum should not be imposed, unless there is a clear necessity for its imposition, and, in such cases, it should be liberally fixed.

It cannot be admitted that a prescriptive right over any forest can be acquired by the continuous purchase of its produce from the owner at market rates, the element of adverse enjoyment and of enjoyment as of right, on which prescription rests, being wholly wanting. A Forest Settlement Officer should not therefore burden Government property with legal obligations, which may prove embarrassing and may prevent the Government from making the best use of its forests.

Whilst, however, desirous that all settlement records of legal rights should be kept within the strictest limits in order to prevent any unnecessary future embarrassment, the Government of India freely admits that every State forest should be worked in such a manner as to secure the greatest possible benefit to the people of the country, and, in preference, to those living in the vicinity of the forest. (G. R. No. 934, 4th February 1886, R. D., circulating No. 48 F. from the G. of I., R. D., dated 16th January 1886.)

Section 3.—Forest Land and Waste Land.

Memo. by L. R.:—The land which section 3 of the Forest Act (VII of 1878) empowers Government to constitute a 'reserved forest' is precisely the same as the land which under section 28 of the Act may be constituted a 'protected forest,' viz., 'forest land or waste land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled.'

"2. Land 'which has been given out for cultivation' is certainly not 'waste land.' 'Forest land' is not defined in the Act, and it is a term not easy of definition, but land which has been given out for agricultural purposes on the ordinary survey tenure, or land which the holder thereof has in any way acquired a right to hold for survey purposes on such a tenure, cannot, I think, properly be called 'forest land, even though it was forest land before it was so given out, and even though Government have reserved their right to the trees, or to some of the trees growing therein. This was in effect the opinion in which Government concurred in their Resolution No. 3112 of 31st May 1881, and it is equally valid whether the proposal is to constitute such land a reserved or a protected forest.

"3. But where land which was originally waste and more or less overgrown with forest trees and jungle has been given out merely for grazing or for dalhi cultivation under conditions restraining the cutting of the forest trees, as is the case, I believe, with much warkas land in the Kolába District, such land is, in my opinion, still forest land and may be dealt with by Government under either section 3 or section 28 of the Act. But care would have to be taken not to include any such land as that described above in paragraph 2." (G. R. No. 904, dated 2nd February 1883, R. D.)

Section 15.—Commutation and its effect.

The object of Chapter II of the Forest Act is to enable the State to maintain certain areas permanently as reserved forest, and with this view an elaborate procedure is prescribed. The Forest Settlement Officer hears claims to rights, and, under section 13, makes a record of such rights as he admits. Then under section 14, 'having due regard to the maintenance of the reserved forest' he proceeds to pass such orders as will ensure the continued exercise of the rights so admitted. If, however, he finds it impossible, having, again, 'due regard to maintenance of the reserved forest,' to arrange the matter suitably, he can, under section 15, commute such rights, either by money payment, or by grant of land, 'or in such other manner as he thinks fit.' The Government of India is advised

that the commutation of rights thus provided for must be of a permanent, and not of a temporary, character, and that, in fact, it must be of such a nature (in whatever manner it may be made) as to absolutely extinguish the right which the Forest Settlement Officer has admitted, but the exercise of which cannot be allowed with due regard to the maintenance of the reserved forest. It may be observed that the words 'other manner,' in the expression "in such other manner as he thinks fit," simply refer to the nature of the consideration which the right-holder is to receive for the commutation of his rights, and imply that it must be a mode *Ejusdem generis* with payment of a lump sum or a grant of land. (Letter from Under Secretary to the Government of India, Revenue and Agriculture Departments (Forests) No. 893, dated 23rd September 1887.)

Opinion of the Advocate General.

"I think that the commutation of rights provided for in section 15 of the Act was intended to be, and according to the true construction of the terms of the section is, an extinguishment of the right commuted for the consideration mentioned, just as by section 10 an absolute surrender (sub-clause 2), or complete and permanent acquisition (Sub-clause 3) of the rights dealt with by that section, are provided for. This view is, to my mind, supported by the terms of section 26, which appear to assume the operation of the Act on forest rights to be limited to extinguishment or absolute acquisition of the same, and by the fact that nowhere in the Act is there any trace of an intention that forest right should, under its provisions, be suspended or temporarily taken up by Government. The expression at the end of section 15, 'in such other manner as he thinks fit,' I construe as having reference only to the consideration to be paid or given for the right commuted, and I am of opinion that these words cannot properly be interpreted as in any degree amplifying or affecting the meaning of the word 'commuting' which must be read in its ordinary signification of 'exchanging,' out and out, and permanently.

"The same objection seems to me to apply to the amended rule suggested by Mr. Fulton in his report, No. 1356* of 1887, dated the 10th October 1887. I think that an arrangement such as is contemplated in that amended rule would be, *not* a commutation under section 15, but a contract between Government and the right-holder altogether *dèhors* the section, and it appears to me that it would be inappropriate and misleading to officers carrying out the Act to provide for such an arrangement in a rule purporting to be made under section 15, for the guidance of officers 'commuting' (*i.e.* permanently acquiring) rights under that section. If in particular cases such arrangements are deemed desirable, and can be come to with the right-holders, they ought, in my opinion, to be embodied in separate and independent agreements, outside and apart from the Act. Such an agreement could, I apprehend, be made in any case, either in the first instance in lieu of a commutation under Section 15 or subsequently to such commutation by way of novation or substituted contract, but under no circumstance could a contract of this kind be deemed to be made under or by virtue of section 15, and having regard to its terms I think the special sanction of Government would be requisite for the making of every such contract.

"I see no reason why a cash allowance, either permanent or temporary and terminable, at a fixed period or on the expiry of one or more lives, should not form the consideration for the commutation (*i.e.* permanent acquisition) of rights under section 15. The granting of such allowances, either permanent or temporary, in lieu of the rights commuted, would, I think, be within the scope of the words 'in such other manner as he thinks fit,' at the close of the section, and no rule appears to me to be necessary to warrant the adoption of this course.

"There can, I venture to think, be few forest rights, for the permanent acquisition (commutation) of which allowances, terminable at periods more or less remote, according to the nature and value of the rights, would not be adequate compensation." (Quoted G. R. 8524, dated 15th December 1887, R. D.)

Engagement of Counsel in enquiry into Claims under the Indian Forest Act.

RESOLUTION.—In the enquiry into all important claims on which the Forest Settlement Officer will pass orders under sections 10, 11, 14 or 15 of the Forest Act, or in regard to which an appeal is preferred under section 16, the Forest Officers who are responsible that the interests of Government are adequately represented, should apply under the standing rules for the advice and assistance of the Legal Remembrancer who will make proposals to engage Counsel as he may think necessary. The Collector who is deputed to hear appeals under section 16 should not, of course, take part in these proceedings.

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* The rule suggested in the Report referred to was as follows:—

"With the consent of the party interested the Forest Settlement Officer may grant an annual allowance in commutation of rights under section 15 of the Forest Act, provided that in such case he shall always direct that the allowance shall cease if the right shall at any time be restored and shall, before accepting such consent, explain this condition to the grantee."

The Forest Settlement Officer who exercises in these enquiries the powers of a Civil Court, cannot with propriety take part in communications relating to the evidence to be collected for the defence. Any decision of the Executive Government against the admission of forest rights is simply a statement of the position which Government propose to defend if it is assailed in the Forest Settlement Officer's Court and is in no way intended as an instruction to the Forest Settlement Officer in his judicial capacity. This should be obvious, but the matter is plainly stated here because it has sometimes been misunderstood. (G. R. No. 7829, 26th September 1885, R. D.)

Sections 9 and 15 inapplicable to Protected Forests.

Memo. by L. R.:—"It is not competent to Government to extend the provisions of section 9 of the Forest Act, regarding the extinction of rights in reserved forests, and of section 15, regarding the commutation of rights in such forests, to protected forests. In the case of a protected forest all that the Act contemplates is an enquiry and a record of rights, not a settlement. If the existence of a right is denied by Government in a protected forest there is nothing to prevent the claimant from resorting to the usual remedy in the Civil Courts to establish his claim, if he is so minded. And if his right is admitted he cannot be in any way *compelled* to commute or part with it. A 'settlement' with him can only be made with his consent." (G. R. 2711 of 31st March 1885 R. D.)

Letter from the Remembrancer of Legal Affairs, No. 531 of 1883, on the subject of Forest Rights in Inám Villages subjected to a Summary Settlement under Bombay Act VII of 1863 in the Thána District.

2. In a large number of the cases reported upon by Mr. Ebden, the inámdárs' original sanad contained the words which have been held by the High Court to convey proprietary rights in the soil and therefore in the forests. I apprehend that there can and will be no question as to the necessity for recognizing the title of these inámdárs to their forests, whatever peculiarities may have been detected in the manner in which the Collector and his subordinates gave effect to the provisions of the Summary Settlement Act in respect to them.

3. The only point which may appear doubtful with regard to inámdárs of this class is whether Government are bound by the terms of the kabuláyat which the Collector had taken from them, to the effect that in lieu of paying a summary settlement cess on their forest-area they would pay one-eighth of two-thirds of the proceeds of every sale of their timber whenever they might fell. These kabuláyats, it seems, are divisible into two classes, viz., (1) those taken after Government Resolution No. 251 of 23rd January 1865 was passed and (2) those taken before that date. There is no ground for any contention against the validity of kabuláyats of the first class, because the above Resolution expressly authorized the Collector to take them.

4. But as regards kabuláyats of the second class there is this to be said, that the Collector had them taken on his own responsibility and that Government have never since formally ratified his act. The history of these kabuláyats is very clearly given in paragraphs 18—34 of Mr. Ebden's able report. It appears that the Collector, Mr. Gordon, finding himself unable to carry out the orders of the Revenue Commissioner, given in his No. 2250 A. of 17th October 1863, as to the manner in which forests should be assessed for the purpose of summary settlements, thought of this plan of avoiding the difficulty. Before asking for the sanction of Government to the plan he took steps for ascertaining whether the inámdárs would accept it. He found that they would, and about seventeen kabuláyats had already been executed before he wrote in for the sanction. In his letter he did not ask Government to ratify the kabuláyats which had already been taken, he did not even mention that any had been taken. With the recommendation, however, of the Revenue Commissioner, Government, in the Resolution named in the last paragraph, sanctioned the Collector's proposal, and I do not suppose that Mr. Gordon in the least doubted that this sanction was sufficient to cover all the kabuláyats already taken. Had Government sanctioned his proposal with some essential modification, it would have been necessary, no doubt, to take fresh kabuláyats and to cancel those previously taken; but in the absence of any such cause the *ex post facto* sanction was very naturally considered by the Collector to be sufficient authority for what he had done in anticipation of it.

5. If, at the time, it had been brought to the notice of Government that these kabuláyats had already been taken, it is certain that Government would have approved them. I think, therefore, the fact that Government shortly afterwards sanctioned generally the Collector's proposal was sufficient to justify him in deeming that Government had ratified the kabuláyats already taken. That this was his opinion is evident because he did not issue orders for having the kabuláyats taken over again as he might easily have done, if he entertained any doubt.

6. These same kabuláyats have now been in force, without any question being raised as to their validity, for twenty years, and, in that interval, have no doubt been more than

once acted upon by both parties. It is not likely, I think, that any Civil Court would, under the circumstances, set aside these kabuláyats as having been made without authority.

7. I am of opinion, therefore, that none of these kabuláyats could now be cancelled except by consent of the parties thereto. Further, the only result of any such kabuláyat being cancelled would be that the forest would have to be assessed under Rule 2 of Section 6 of Bombay Act VII of 1863, and it is, I think, very doubtful whether such assessment would be as profitable to Government as the arrangement in force under the kabuláyats.

8. The foregoing remarks (paragraphs 4 to 7) have been limited to the case of inámdárs whose proprietary title was evidenced by their original sanads. But it will be evident that the same reasoning is equally applicable to all other inámdárs whose holdings contained forests, if they were otherwise entitled to have the summary settlement extended to those forests.

9. As regards inámdárs whose forest rights were not clearly evidenced by their original title-deeds, the only questions raised which I need discuss are, therefore :—

(1.) What is the effect of the manner in which the notices issued under the Summary Settlement Act to these inámdárs were worded—

(*a*) with respect to the area or revenue of the holding, and

(*b*) with respect to the foot-notes, which are translated in paragraph 43 of Mr. Ebden's letter?

(2). What is the effect of no decision having been come to before their kabuláyat was taken, as to whether the forests were their property or not?

10. It is important that it should be borne in mind that the summary settlements in question were not merely contracts between the inámdárs and Government, the terms of which must be sought in the offer made on the one hand and the acceptance given on the other. These settlements were made under the provisions of Bombay Act VII of 1863, an enactment expressly passed for the purpose of legalizing, regulating and facilitating them. The correspondence to which Government allude in their letter under reply establishes that the following points, which I have from time to time submitted for the consideration of Government, have been concurred in by two successive Advocates-General, the Honourable Mr. Marriott and the Honourable Mr. Latham.

(1.) That on the acceptance by the holder of any land of the summary settlement, the said land becomes his "heritable and transferable property" (Section 6, Bombay Act VII of 1863);

(2.) That the right to the trees necessarily follows the property in the soil (VI., Bo. H. C. R. 188, A. C. J.);

(3.) That such right extends to the whole area in respect of which the summary settlement was offered and accepted; and

(4.) That Rule 2, section 6 of Bombay Act VII of 1863, merely enabled the Collector to assess land of an exceptional character at his discretion, but did not permit of his excluding such land or the trees growing upon it from the operation of the settlement.

In further explanation of the last two points, I may now add :—

(5) That there is nowhere in the Act any authority for splitting up a holding and for offering the summary settlement in respect of one portion of it and withholding the offer in respect of the rest. The evident intention of the Act is that each holder of "lands held either wholly or partially exempt from the payment of land-revenue" shall be entitled to the summary settlement in respect of his entire holding.

11. Section 9 of the Act provides for the service of a notice upon the holder of lands held wholly or partially exempt from land-revenue. There is no provision in it that the area of the lands to which it applies shall be set forth in the notice. The notice is to call upon the holder of the exempt lands "to state whether he is willing to accept and abide by the settlement" prescribed by the Act, "or whether he demands formal inquiry into his title." It is also to "explain the nature of the alternatives offered on the part of Government." Nothing more.

12. A person receiving a notice and looking to the terms of the Act under which it was issued would therefore be entitled, in my opinion, to regard anything contained in it which was not prescribed by the Act as surplusage which could not affect his legal position one way or another. At any rate he would not be bound by anything which was inconsistent with the Act.

13. Now it was not essential that the notices should set forth the area of the holding to which they related. The Collector of Thána appears to have been aware of this, for in

his very first instructions issued on 11th September 1863, he directed that the area of a village should only be entered when the survey of that village had been completed, and that in other cases it would be sufficient to write "*sabandh gaon*", the entire village "*nime gaon*", half the village, &c., as the case might be. It does not appear to me reasonable to hold the Collector, and still less the inámdárs, responsible for the various entries which the Mámlatdárs and their clerks made in the notices, in execution of, or in spite of this order. I do not think Mr. Ebden has succeeded in showing that there was any intention on the Collector's part of limiting the settlement to the precise area set forth in the notice; and if he had any such intention it was, I think, inconsistent with the Act. His object really appears to have been merely to indicate with sufficient clearness the holding to which the notice referred, and this is all that was necessary under the Act. Just as the parties to a deed are not held to be bound by an erroneous entry therein of the extent of area of the property affected, so also the figures in one of these notices were unessential if the holding to which the notice related was otherwise clearly indicated therein.

14. The same may be said, I think, with regard to the amount of assessment or revenue shown in the notices. There was no legal necessity for setting forth in them the amount of the assessment on which quit-rent would be leviable. The Act clearly prescribes how the amount is to be ascertained and a reference to those rules would have sufficed. No legal presumption can be drawn fron the fact that the assessment of forests was or was not shown, along with the assessment of the cultivated area, in the notices.

15. The Collector at first directed that the holders of forest villages should not be served with notices until orders should be received as to how to calculate the forest revenue. Afterwards, when he had received the Revenue Commissioner's instructions as to the manner in which the assessment of forest lands should be ascertained, he called for a list of inám villages in which the forest had been decided to belong to the inámdár, and directed that the notices for forest villages in which the forest had been decided to belong to Government should not show the forest revenue. From these two orders and from the Collector's subsequent order it seems that Mr. Gordon's idea was that the entire assessment on which quit-rent was to be levied should be shown in the notice. But when he attempted to give effect to the Revenue Commissioner's orders for fixing the assessment of the forests, he found himself beset by difficulties, and so, as he was pressed not to delay issuing notices, he issued them to the holders of forest villages without showing the assessment of the forest but with foot-notes added to the effect that the quit-rent in respect of the forest would be levied separately, and in doubtful cases that the question of the inámdár's right to the forest would be the subject of future inquiry. In all this Mr. Gordon no doubt acted cautiously and discreetly, but the absence from the notices issued under his orders of the forest assessment or revenue is not a certain indication that he did not intend the forests to be included in the settlement even if it was competent to him (which it was not) to exercise his own will in the matter.

16. With regard to the foot-notes which Mr. Gordon caused to be added to some of the notices, it is clear, I think, that they could have no binding force. The inámdárs might receive them as indicating the Collector's view of the law or as affording information of his intentions at that time, but their acceptance of the summary settlement, or their failure to reply to the notice had, in my opinion, no other effect than what the Act itself prescribes.

17. With regard to the reservation of the right of future inquiry into the inámdár's claims to the forest, I cannot help thinking that Mr. Gordon went much further than the Revenue Commissioner or Government intended. The Revenue Commissioner, Mr. Ellis, in the last paragraph of his letter No. 2250-A of 17th October 1863 stated as follows:—

> "3. This rule applies only to inám villages in which the inámdár claims his right over a forest not included in the assessed lands of his village, but does not apply to forest admitted to be Government reserves which may happen to be situated within the limits of inám villages."

The words used are "claims" as regards inámdárs' forest and "admitted" as regards "Government reserves." There is no indication here of an intention that there should be a preliminary inquiry and a decision in every case as to the inámdár's right to his forest. So again Government Resolution No. 254 of 23rd January 1865 was passed upon the assurance of the Revenue Commissioner that "the settlement suggested was applicable only to alienated forests and not to those which were *admitted* to be Government property." The Revenue Commissioner evidently thought that the summary settlement should and would extend to all forests within inám villages not *admitted* to belong to Government.

18. Mr. Ebden has devoted some paragraphs to show that an inquiry and a decision on this question of an inámdár's right to his forest would not be foreign to the intention and meaning of the Summary Settlement Act. From this opinion I entirely differ. The primary object of the Summary Settlement Act was to dispense with the necessity of all preliminary inquiry or decision, and the erroneousness of Mr. Ebden's argument is, I think, at once evident if we attempt to answer the questions: (1) by what authority could such an inquiry be conducted and (2) what legal force would the Collector's

decision have as against the express provision of the Summary Settlement Act that the entire holding of every inámdár who accepts a summary settlement shall thenceforward become his heritable and transferable property ?

19. The Resolution of Government, No. 3988 of 14th October 1864, placed the question of summary settlement holders' rights to trees and forests in its correct light. It said :—

"The Resolution of Government, No. 5388 of 1861, was intended to set at rest all doubts in regard to ináms to which the summary settlement was applied, that is, lands actually in the occupation of persons claiming them as ináms.

"2. The decision in all cases with regard to the claims to trees will therefore turn upon the fact whether the inámdár was exercising over the lands in which the said trees are situated, rights of occupancy. If he was, his right to the trees should be admitted under the summary settlement, but if, as frequently happens, the forest reserves were distinct from the rest of the village lands, and the inámdár exercised no rights of occupancy over them at the time the settlement was made, he should not be admitted under it to a right in such reserves."

20. This Resolution seems to have escaped Mr. Ebden's notice. It was no doubt in the hands both of the Revenue Commissioner, N. D., and of the Collector of Thána soon after the date which it bears, and it probably accounts for the fact that the Collector never made the threatened inquiries into the forest rights of those inámdárs whose original sanads did not in distinct words convey to them a proprietary title. If he was satisfied that a forest was included in the area within an inámdár's occupation, both the above Government Resolution and the Summary Settlement Act gave the inámdár a perfect title to that forest.

21. With reference, therefore, to the second question which I have set myself to answer (*supra* paragraph 9) I am of opinion that the Collector's reservation of a right of inquiry and decision into forest claims was unnecessary and unauthorized, and therefore void, and that the kabuláyat taken from an inámdár before any such decision was passed was therefore good and binding, if the forest to which it related was within his holding and not a distinct forest reserve admittedly belonging to Government.

22. I may add that even had my opinion as to the forest-rights of inámdárs under a summary settlement been other than it is, I should have felt great difficulty in advising Government that they might ignore and set aside agreements which were executed twenty years ago and which, as I have said above, have probably been acted upon in the interval more than once. (Accompaniment to G. R. No. 1674, 8th September 1883.)

Opinion of the Advocate-General on the Forest rights of certain Inámdárs in the Thána Collectorate.

Before proceeding to categorically answer the several questions contained in the letter No. 3854 of 1883, Revenue Department (19th May last), from the Under Secretary to Government to the Solicitor to Government, it will be well to draw attention to the provisions of the Summary Settlement Act (Bombay Act VII of 1863).

The Act recites that it is expedient to provide with certain exceptions for the summary settlement of all claims to hold land wholly or partially exempt from the payment of land revenue and

Section 2, clause 1, enacts that when the holders (holder is defined as the person who by himself or his tenants, &c., is in possession) of lands (except, &c.) held either wholly or partially exempt from the payment of land revenue, shall consent to the terms and conditions thereinafter described, it shall be lawful for the Governor in Council to finally authorize and guarantee by sanad the continuance in perpetuity of the said land to the holders, their heirs and assigns.

Section 6 enacts that the lands so continued in perpetuity shall be the heritable and transferable property of the holders, their heirs, &c., and be continued in perpetuity at a fixed annual payment to Government.

Section 9 enacts that in order to ascertain whether a holder desires to accept the settlement the Collector, &c., shall serve him with a notice calling upon him to state whether he is willing to accept the settlement or whether he demands an enquiry into his title, and clause 8, that if the holder makes no answer for six months stating that he declines the settlement, &c., he shall be deemed to have dispensed with enquiry and the lands shall be dealt with under sections 2 and 6.

Section 10 enacts that if a holder claims an enquiry, then enquiry shall be conducted under the rules enacted—Clause 2, that all land held in excess of that by which title is established, shall be fully assessed.

It is to be observed upon these provisions that the benefit of the Act is to be given to such holders, *i.e.*, persons in possession, as consent to the terms and conditions of the Act, in preference to being obliged to prove their title to exemption, and there is to be no enquiry into title save when the holder demands such enquiry.

The sole question is the fact of occupancy, and clause 2 of section 10 shows, that save where there is an enquiry into title, the right to occupancy is not a subject of enquiry.

Government in my opinion in their Resolution No. 3988 of 14th October 1862 @ 64 (referred to in paragraph 19 of Mr. Naylor's report 531 of 1883) took a perfectly correct view of the Act and were quite right in laying down in the 2nd paragraph of that Resolution that "claims to trees will therefore turn upon the fact whether the inámdár was exercising, over the lands in which the trees are situated, rights of occupancy. If he was, his right to the trees should be admitted."

So where the fact of occupancy exists there is no enquiry into the occupant's rights—if he occupies forest land there is no enquiry whether under the terms of his sanad or otherwise he is entitled to the ownership of the forest or not.

And thus the foot-notes to the notices referred to in Mr. Ebden's letter reserving the question of the ownership of the Forest until inspection of the sanads are not in accordance with the Act.

I now proceed to answer the questions put in the Under Secretary's letter.

I. Is it consistent with the Summary Settlement Act to make an enquiry for the purpose of determining whether forest land forms part of the holding of an inámdár and in his possession?

If "an enquiry" in this question means an enquiry at which the inámdár is to attend and by which he is to be bound, I think such an enquiry is inconsistent with the Summary Settlement Act, for there is no provision regarding such an enquiry, nor is there any means for making the enquiry binding upon the inámdár.

The only enquiry contemplated by the Act is that under section 10 where the inámdár claims an enquiry and under clause 2 of that section, a full assessment is leviable on all land found upon such enquiry to be held in excess of that to which the title is established.

The Act does not contemplate that there would be any question respecting the area of the holding.

Certainly, and the effect is that the ownership in the soil and trees of the forest referred to in A. under the provisions of the Act become the absolute property of the inámdár.

II. Does a kabuláyat in form A. constitute by itself a contract binding on Government?

I should consider it unlikely that any kabuláyat was executed without any notice under section 9 of the Act.

III. When such a kabuláyat was executed prior to the issue of the notice of settlement and when the notice of settlement issued subsequently reserved the question of forest rights must the settlement be held to have extended to the forests, or is it still open to Government to enquire whether the forest land was in the possession of the inámdár and formed part of his holding at the time of the settlement? Would the burden of proving the exercise of rights or possession lie on the inámdár?

And I have already pointed out that where the forest was in the occupancy of the inámdár any reservation in the notice of the question of forest rights was *ultra vires* of the Act.

Whether a preliminary notice under section 9 was given or not, would not affect the validity of the kabuláyat, and the kabuláyats in my opinion would be binding upon Government for the whole area mentioned in them, whether forest or not; and I think it is not now open to Government to enquire whether the forest land was in the possession of the inámdár and formed part of his holding at the time of the settlement.

A contract can only be rectified when through fraud or mutual mistake of both parties it does not truly express their intention [Specific Relief Act I of 1877, section 31]; and a contract is void only where both parties to it were under a mistake as to an essential matter of fact; it is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact [Indian Contract Act 9 of 1872, sections 20 and 22].

No fraud is alleged on the inámdár's part, the utmost that can be said is that Government officials were mistaken as to area in the inámdár's holding.

No kabuláyat has been granted for Maniavli, but here as in all other cases the question is, what is the area of the holding; for that area the inámdár would be entitled to the summary settlement with its consequent advantages and if that area comprised the forest, the subject of the decision of the decree, the inámdár would be entitled to the summary settlement in respect of that forest notwithstanding the High Court's decree on the construction of the sanad.

IV. Does the entry of the words Sabandh Gaon (entire village) in the notice of settlement have the effect of extending the settlement to the forest lands notwithstanding any reservation which may be made regarding such land? The High Court in their decree No. 9 of 1868 rejected the Maniavli inámdár's claim to forest rights on the ground that the sanad did not convey the soil (*vide* entry No. 42 in Mr. Ebden's list among the papers) though in the notice of summary settlement the phrase "Sabandh Gaon" was used.

If the inámdár was in possession of part only of the village, the entry of Sabandh Gaon in the notice, by mistake, would not bind Government and the settlement would be for the actual area of the holding. If, however, the holding comprised the whole village, including the forest, the exclusion of the forest by the foot-note to the notice could not deprive the inámdár of his right to the summary settlement in respect of that forest.

I cannot advise on this limited statement of facts. It is not said whether the inámdár held the forest or not or whether he accepted the offer of summary settlement or whether any sanad has been granted.

V. In the case of the village of Khadavli must the entry of the words "Sabandh Gaon" without any reference to forests in the notice of settlement, be construed as an extension of the settlement, to forest land notwithstanding that Government had previously decided that the inámdárs had no right in the Forest land?

VI. Does the unauthorized taking of a kabuláyat regarding the forest land in Bársangi have the effect of extending the settlement to such land, or does it constitute an agreement outside the settlement which is binding on Government?

Here the kabuláyat has been taken so long ago as February 1875.

The foot-note to the notice reserving forest rights was, as before stated, *ultra vires*, and the circumstance that no proof was given that the inámdár held the wahivat of the forest or that his sanad gave no forest rights cannot affect the validity of the kabuláyat—*vide* my reply to question No. 3.

It would not appear that any settlement has been made. But it would seem that the inámdár is in possession, and if that be so, notwithstanding his sanad, he would be entitled to the forest under the Act.

VII. If the settlement made regarding the village of Milhe was based on a misapprehension, can the mistake be now rectified?

Before I could answer this question satisfactorily I must know something more of the facts. It may be that a question had arisen respecting the inámdár's right to the forest and that the Conservator of Forests without definitely deciding upon those rights gave him leave to cut; if so, this would be equivalent to admitting the inámdár's right to possession.

VIII. In the case of Ambitghar and other villages, would the permission to cut given by the Conservator of Forests be held to prove possession of the forest land?

Act VII of 1878, section 79, enacts that if Government and any person be "jointly interested." I think "jointly interested" is intended to apply to cases where there is unity of possession by Government and the inámdár of the forest in question, not to cases where (although there is no line of demarcation) it can be said Government is entitled to one portion and the inámdár to the other.—(Accompaniment to G. R. No. 1674, dated 8th September 1883.)

IX. In the case of Sharakati villages in which forest rights in half the villages have been conceded to the inámdár, but where there has been no demarcation, can Government take over the management of the forests under section 79 of the Forest Act?

In cases in which a summary settlement has been made and a kabuláyat has been executed regarding the forests, the right of the inámdár to the forests on the conditions specified in the kabuláyat, should be admitted. (G. R. No. 1674, dated 8th September 1883.)

Enquiries into Claims to Forest Rights before they are admitted by Government.

It has not been decided that the fact of a summary settlement having been applied to a village is sufficient proof, *primâ facie*, of full forest rights having been granted, but only that when a summary settlement has been made it is unnecessary to go beyond it, that is, to investigate the antecedent validity of title, and it has been directed that in every case it should be clearly ascertained whether the settlement extended to forests, and that a report should be made to Government on that point before any claim to forests is admitted. In cases in which a summary settlement has not been made, the existence of a valid sanad in which full forest rights throughout a village are granted is conclusive, and when that fact is established, further inquiry is unnecessary, but all claims to forests should be reported to Government through the Legal Remembrancer for final orders. (G. R. No. 1305, dated 17th February 1883, R. D.)

Title of Inámdárs to Forests under Summary Settlement when not to be questioned.

The opinion of the late Advocate-General recognizes the possibility of a summary settlement which has been applied to cultivated lands not having been extended to forests in the same village. It has not been ordered, and it is not intended, that inámdárs should be called upon to prove their right to forests. If it cannot be proved from the Collector's records or otherwise that the forests were at the time of the settlement in the possession of Government, the title of the inámdár will not be questioned. But it is obviously desirable that before the settlement of the táluka or district is considered complete, it should be clearly determined to what lands the summary settlement has been applied. (G. R. No. 3079, dated 15th April 1884, R. D.)

Rights to Forests how conferred (a) by Sanad (b) by Summary Settlement.

The Governor in Council is of opinion that the rules on which Government have hitherto acted in deciding cases regarding the forest rights of inámdárs in their inám villages should be adhered to. These rules are (1) that the words "*jal, taru*, &c." in a sanad give a right to the forest; (2) that the Inám Commissioner's decisions are final: and (3) that the summary settlement gives a right to the forests. (G. R. No. 8185, dated 9th October 1885, R. D.)

Object of enquiries into Inámdár's Forest rights.

The object of these enquiries, as connected with forest settlements, is to enable Government to decide in each case whether Government has the right, should it be deemed desirable, to constitute part of the land of the village State forest. It has been held that Government has no such right when all Government rights have been granted to the inámdár without reservation, or with reservations which do not include the trees. (G. R. No. 8838, dated 31st October 1885, R. D.)

Nature of enquiries.

"It is not necessary that the inámdár should be called upon in every case to state whether he claims forest rights, and if so, upon what grounds. The object of these inquiries, which are not in any sense judicial or conclusive inquiries, is, to enable Government to determine in what inám villages they will and in what they will not assert forest rights. When once it is ascertained that a village has come under the summary settlement, Government have at once the means of determining their course without further investigation, and it seems quite unnecessary to trouble the inámdár. In most other cases also the nature of an inámdár's title is ascertainable without reference to him, and the inámdár should only be asked to furnish information or to state his own views when the Forest Settlement Officer has reason for doubting the real state of the case concerning his village." (G. R. No. 469, dated 20th January 1866, R. D.)

Submission of cases regarding the Forest Rights of Inámdárs.

Cases regarding inámdárs' forest rights may in future be sent by Forest Settlement Officers and Collectors direct to the Legal Remembrancer. (G. R. No. 7851, 5th November 1886, R. D.)

Distinction between Notifications under section 4 and under section 19, Forest Act.

Surveys for the purpose of demarcating forests merely, need not necessarily be made under the provisions of Chapters VIII to X of the B. L. R. Code. Section 8 of the Indian Forest Act, 1878, empowers a Forest Settlement Officer 'to enter by himself or any officer authorized by him for the purpose, upon any land, and to survey, demarcate and make a map of the same'; and appears to be quite sufficient for all the purposes of this Act. Such survey and demarcation can, however, only take place after a notification declaring that it is proposed to constitute a reserved forest has been issued under section 4 of the Forest Act. In such notification it is 'sufficient to describe the limits of the forest, by roads, rivers, ridges or other well known or readily intelligible boundaries' (*vide* explanation 1 to section 4). In the notification finally declaring a forest reserved, to be issued under section 19, the limits must be specified definitely, according to boundary-marks erected or otherwise. (G. R. No. 2813, dated 9th April 1883, R. D.)

Powers of Officers enquiring into Forest rights.

Section 189 of the Revenue Code empowers a 'revenue officer' to summon witnesses, &c., 'for the purposes of any inquiry which such officer is legally empowered to make.' The term 'revenue officer' is defined in section 3, clause 2 of the Code, to mean an officer appointed under that Code and 'employed in or about the business of the land revenue or of the surveys, assessment, accounts, or records connected therewith.' An officer employed in ascertaining whether the forest rights in a certain village belong to Government or to the inámdár is not a revenue officer as thus defined, and he could not legally exercise the powers conferred by section 189 of the Code for the purposes of any such inquiry. Even were he gazetted an Assistant Collector, the inquiry would not relate to 'the business of the land revenue', nor could it be held to be an inquiry which an Assistant Collector is legally empowered to make. (G. R. No. 4964, dated 20th June 1884, R. D.)

Levy of Judi on "Cuttings" under Agreement.

The decision of the question whether 'Judi' is to be levied from inámdárs on the proceeds from the sale of such minor produce as the leaves of Apta, Temburni and Pallas trees, Hirdás, Shikakái, &c., growing in their forests," must rest in each case on the terms of the

agreement executed by the inámdár, and a general rule cannot be laid down without regard to the agreements. When an inámdár has agreed merely to pay judi on timber or on "cuttings," judi cannot be levied on profits derived from minor forest produce. (G. R. No. 6632, dated 8th September 1883, R. D.)

Modification of Judi.

The Commissioner, C. D., raised the following questions:—

First.—Whether in cases in which the summary settlement levies have been fixed as permanent without assessing the kuran or waste lands, the judi can now be modified on that account.

Secondly.—Whether in cases where settlement judi is liable to modification on the introduction of survey rates, and the unassessed waste lands have not hitherto been assessed, an assessment can now be imposed and an addition of judi levied on such assessment without waiting for the introduction of the survey.

Thirdly.—Whether on a refusal on the part of an inámdár to pay such additional judi the lands in question could be forfeited to Government and treated as ordinary khálsa lands.

Report by the Remembrancer of Legal Affairs:—"I would answer each of the three questions in the negative; but a single reply in the negative might lead to misapprehension.

"2. With regard to the first question, the test is whether the assessment of a village for the purpose of settling the amount of quit-rent payable under the summary settlement by the inámdár of that village has been already, once for all, fixed under either Rule 1 or Rule 2 of section 2, Bombay Act II of 1863. If it has, it cannot now be questioned; but if the question of the proper assessment of any village or of any portion of a village was expressly reserved for future consideration, there would be good ground for completing what was previously left unfinished.

"3. With regard to the second question, a reference to the above-mentioned Rule 1 will show that the Collector errs in saying that settlement judi is liable to modification 'on the introduction of survey rates' into an inám village. All that the rule contemplated was that in the case of villages as to the assessment of which, for the purpose of calculating summary settlement quit-rent, the Collector and the holder could not agree, the assessment should be 'the existing rental of the lands until the revenue survey * * * * shall have placed a new assessment thereon, after which the assessment so placed by the said revenue survey shall be understood to be the assessment.' There is a great difference between the introduction of survey rates into a village and the placing of an assessment on a village by the revenue survey, and if the settlement of the assessment has been deferred in any case till the former occurrence takes place, the procedure has been irregular. In other districts, I believe the revenue survey assessed some inám villages merely for the purpose of satisfying the requirements of the above Rule 1. Where this has been done, the assessment fixed by the survey is, in my opinion, final, whether the survey assessed kurans and waste land or not.

"4. As to the third question, inám land could, of course, not be forfeited to recover any illegal demand, but if an inámdár refused to pay quit-rent lawfully due by him, all the methods prescribed by the Revenue Code for the recovery of revenue demands could be enforced against him or his property." (G. R. No. 1957, dated 12th March 1886, R. D.)

Service Lands are "alienated" but not held under a Proprietary Title.

"1. Section 40 of the Land Revenue Code is inapplicable to lands held for service, which are 'alienated' and not 'unalienated lands.'

"2. The former portion of No. 10 of the Joint Rules applies in every village in the Násik District into which a survey settlement was introduced during the period when that rule was in force.

"3. But as the rule is relied upon as conveying a grant or concession by Government, it should be strictly construed in favour of the State, and the words 'proprietors of inám, judi and mirás lands' may reasonably be taken to mean persons having proprietary rights in such lands. The use of the word 'proprietors' in such a context is unusual and unless it was intended by using it to lay stress upon the possession of proprietary right, it is not easy to account for the more ordinary words 'holders,' or the more natural terms 'inámdárs, mirásdárs, &c.,' not having been employed.

"4. Government may fairly claim that the Joint Rule No. 10 merely acknowledged the right over trees possessed by proprietary inámdárs, which has since been frequently decreed by the civil courts.

"5. *Primâ facie* lands held for service are not held under a proprietary title and there is no reason for thinking that the lands of the Hatnore jágliás are exceptional. Unless they hold under a title-deed which confers proprietary rights in express terms, they are not entitled to the timber on their lands or to forest rights." (G. R. No. 419, dated 17th January 1887, R. D.)

Forest Rights in Service Lands.

The distinction between a holder of service lands and an ordinary occupant is clear. Service tenure is a privileged tenure and the extent of the alienation conveyed in the privilege is governed by the general rules which do not presume cession of forest rights in the absence of proof.

2. Government can disallow altogether the cutting of trees in service lands or can permit it subject to such conditions as they may think fit to impose. (No. 5987, dated 6th September 1888, R. D.)

Section 55.—Meaning of term "Forest Produce."

Memo. by L. R.:—"The definition of the term 'forest produce' given in the Forest Act is not exhaustive, and reading the term in its ordinary sense it means anything which is produced in a forest and it therefore includes, in my opinion, a crop raised in a forest reserve.

"2. I agree with the Collector that in the case he mentions the crop is the property of Government by accession, and, therefore, under section 55 of the Act, it may, I think, be taken charge of by a Forest officer." (G. R. No. 6910 of 28th August 1884, R. D.)

Section 63.—Powers of seizure.

In accordance with the opinion of the Remembrancer of Legal Affairs a Forest officer has power, under section 63 of the Indian Forest Act, to arrest without warrant a person guilty or reasonably suspected of having cut without the requisite permission Government teak trees on occupied numbers, but at the same time as such teak is not forest produce he has not authority to seize it under section 52 of the Act. The unlawful cuttings and loppings under the rule under section 75 published in Government Notification No. 343, dated 15th January 1883, being the property of Government can however be seized and detained, pending final disposal of the case, by the officers of Government under the ordinary criminal law like any other stolen property. (G. R. No. 9961 of 11th December 1885, R. D.)

Section 81.—Meaning of "Price of any Forest Produce."

Letter from the Conservator of Forests, N. D.:—"5. The marginal note in the Forest Act against section 81 reads thus: '*Recovery of money due to Government.*' The grazing of a reserved forest was sold to a contractor who was bound under written agreement to pay the amount of any damages which might occur by proceedings or default on his part beyond the stipulations of his agreement. The contractor let in sheep into the reserved forest which he was not entitled to do, and the sheep devoured plants, which a Committee, the contractor being a member thereof, valued at Rs. 26. I deferentially submit that this money comes in the words of section 81 of the Forest Act within the description of '*on account of the price of any forest produce*,' and if the marginal note 'Recovery of money due to Government' is meant to express the intention of section 81 then the money is, I still think, leviable under that section."

Memo. by L. R.:—The 'price' of a thing is the sum for which it is sold, not the value at which a thing may be assessed after it has been misappropriated. Marginal notes are merely a guide to the contents of the sections of an enactment; they are not a part of the law." (G. R. No. 1422 of 14th February 1884, R. D.)

Section 81.—Recovery from Persons resident in Native States.

Memo. by Acting L. R.:—"Government calls for my opinion as to the legal course to be adopted for the recovery from persons resident in Native States of monies due, which in the Bombay Presidency would be recoverable as arrears of land revenue.

2. In the particular instance referred to, a man bought Government timber for Rs. 209, deposited Rs. 43, and never paid the rest. The timber on resale by the Forest Department realized only Rs. 114. The balance of Rs. 52 has yet to be recovered. The purchaser, however, after the sale went and lived in a Native State. The Political Agent expressed his inability to realise the deficit as an arrear of land revenue.

3. The statement of the Law contained in the preamble to Government Resolution No. 2877, Revenue Department, of 21st May 1881, appears to be indisputably correct and equally applicable to Native States as to Districts in another Presidency.

4. There appear to be two courses open therefore :—

(*a*) to wait till the debtor re-appears in British territory, and then enforce recovery under the Bombay Land Revenue Code, against any available property he may have with him, the balance of the price being, as pointed out in Government Resolution No. 7373 of 6th November 1888, still recoverable as land revenue, or

(*b*) to file a suit against him in the Court within whose jurisdiction the cause of action arose, the service of summons being effected under section 89 or section 90, Civil Procedure Code, as amended by section 12 of Act VII of 1888, as the case may be, and on decree being obtained execution will probably be obtainable, by transfer of the decree to the appropriate Court established or continued by the authority of the Governor General in Council in the territories of the Native State, if the Governor General in Council has by notification in the *Gazette of India* declared section 229A, Civil Procedure Code, as amended by section 24 of Act VII of 1888, to apply thereto (*vide* section 229A as amended by section 24 of VII of 1888).

5. If section 229A has not been made applicable to the Native State in question, there would be apparently no means of executing the decree till the debtor appears in British territory. If he does so re-appear he might be called on to give security to appear and answer any decree that might be passed against him (section 447, Civil Procedure Code), and on failure to give security he might under section 481 be detained till he complies.

3. Otherwise there appears to be no remedy unless Government should decide to sue the debtor in a Court having jurisdiction in the Native State in question. (G. R. No. 7103 of 20th September 1889, R. D.)

Sections 81 and 82.—Recovery by Collector after sale by Forest Department.

"Memo by Acting L. R.:—A purchaser of Government timber at auction paid only a portion of the price. The Forest Department appear to have taken possession of a portion of such timber and to have sold it by public auction in order to realize the balance of the price.

"The price fetched at this second sale not realizing all that was due, the Conservator applied to the Collector to realize the outstanding under section 81 of the Forest Act VII of 1878.

"The Collector declined on the ground that the balance due was not part of the price but a deficit on re-sale for which no provision existed such as in analogous cases under the Land Revenue Code is made by sections 175, 176 and 177.

"2. The question is whether the money can be recovered under section 81 of the Forest Act as if it were an arrear of land revenue.

"3. Section 81 provides that money payable on account of forest produce may be recovered as if it were an arrear of land revenue.

"4. This was clearly the opinion of the Honourable Mr. Naylor as expressed in his report No. 1645 of 22nd December 1813 (Government Resolution No. 239, dated 10th January 1884).

"5. Money payable on account of the price does not lose its character by the mere fact that part recovery has been effected under another procedure. If a portion of the price had been recovered as it fell due by civil suit or by auction sale under the Land Revenue Code, or in any other way, that would not affect the power conferred by section 81 in respect of the balance.

"6. The Collector appears to regard section 82 of the Forest Act as providing for a re-sale.

"7. I do not think section 82 refers to re-sale. It is evidently framed so as to include all cases where money is due under the Act or under the rules and would cover such cases as are provided for by rules under section 51(*c*), and all cases in which money is payable under the Act as duty, fee, royalty, &c.

"8. This I think accounts for the omission in section 82 of all reference to deficit and re-sale.

"9. Indeed section 82 does not treat the sales made by a forest officer under its provisions as a re-sale at all. In cases where the legislature provides for re-sale (*vide* Civil Procedure Code, section 308 and Land Revenue Code (Bombay V of 1879, section 175) the defaulting purchaser is declared to forfeit all claims to the property or to any part of the sum for which it may be sold.

"10. Section 82 does not do this and does not extinguish the property in the produce sold, but only declares it subject to a charge.

"11. Section 82 therefore does not operate as a rescission of the sale, but only as one of the means by which money payable for or in respect of produce may be recovered, and the balance unrecovered is therefore still due on account of the price, and does not become due as a deficit on re-sale.

"12. I am therefore of opinion that such balance of the price is recoverable under section 81 as if it were an arrear of land revenue notwithstanding any other steps short of a rescission of the sale that may have been previously taken for recovery. (G.R. No. 7373, dated 6th November 1888, R. D.)